

## BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of )  
 )  
 Alexandra Chalupa ) MUR 7271  
 Chalupa & Associates, LLC )  
 )

REPLY BRIEF OF ALEXANDRA CHALUPA AND  
CHALUPA & ASSOCIATES, LLC

## I. STATEMENT OF THE CASE

This matter arose from a Complaint filed on August 9, 2017 by the Foundation for Accountability and Civic Trust (“FACT”),<sup>1</sup> alleging that Alexandra Chalupa and Chalupa & Associates, LLC (“Ms. Chalupa”),<sup>2</sup> acting as agents of the Democratic National Committee and William Derrough in his official capacity as treasurer (“DNC”), “solicited, accepted, and received contributions” from a foreign national by making a request that then-President of

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<sup>1</sup> Despite its stated purpose of promoting “accountability, ethics, and transparency in government and civic arenas,” FACT has long been linked to a number of undisclosed financial sources. Viveca Novak & Anna Massoglia, *New Nonprofit Tied to Stealthy Circle of Dark Money Groups*, Open Secrets (Apr. 15, 2016), <https://www.opensecrets.org/news/2016/04/new-nonprofit-tied-to-stealthy-circle-of-dark-money-groups/>. FACT was called a “chop shop of fake ethics complaints” by a Republican strategist involved in some of its early efforts. David Freedlander, *When Matthew Whitaker Ran a Chop Shop of Fake Ethics Complaints*, NEW YORK MAGAZINE (Nov. 9, 2018), <https://nymag.com/intelligencer/2018/11/matthew-whitaker-ran-a-chop-shop-of-fake-ethics-complaints.html>. FACT’s Executive Director at the time the Complaint was filed was Matthew G. Whitaker, who briefly served as Acting U.S. Attorney General after the firing of Jeff Sessions.

<sup>2</sup> Chalupa & Associates is a single member LLC consisting only of Ms. Chalupa. Affidavit of Alexandra Chalupa, at 1 (“Chalupa Aff.”). All references to Ms. Chalupa herein include Chalupa & Associates, LLC.

Ukraine, Petro Poroshenko, publicly comment on the relationship between Paul Manafort<sup>3</sup> and former Ukrainian President Viktor Yanukovich.<sup>4</sup>

On July 25, 2019,<sup>5</sup> the Commission found reason to believe that Ms. Chalupa violated the Federal Election Campaign Finance Act of 1971, as amended (the “Act”) and Commission regulations by soliciting an in-kind contribution from a foreign national in violation of 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g).<sup>6</sup> In explaining its decision, the Commission relied exclusively on an article in *Politico* that pushed the now thoroughly discredited and debunked theory that Ukraine, not Russia, interfered in the 2016 presidential election.<sup>7</sup> The article was based on the statements of a former Ukrainian government employee, Andrii Telizhenko, who is now on the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) sanctions list for “for having directly or indirectly engaged in, sponsored, concealed, or otherwise been complicit in foreign influence in a United States election” by being part of a

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<sup>3</sup> Mr. Manafort, a Republican strategist and consultant, joined the presidential campaign of Donald Trump as the campaign convention manager for the Republican National Convention. He was shortly promoted to Campaign Chair and Chief Strategist. See, Meghan Keneally, *Timeline of Paul Manafort’s Role in the Trump Campaign*, ABC NEWS (Oct. 20, 2017), <https://abcnews.go.com/Politics/timeline-paul-manafort-roles-trump-campaign/story?id=50808957>.

<sup>4</sup> Viktor Yanukovich served as President of Ukraine from 2010-2014. Following the pro-democracy protests that toppled his government, he fled to Russia where he has lived in exile since. In 2019, Yanukovich was convicted in absentia and sentenced to 13 years for crimes against the state, including treason. *Ukrainian Court Sentences Ex-President Yanukovich to 13 Years in Prison*, Reuters (Jan. 24, 2019), <https://www.reuters.com/article/us-ukraine-crisis-yanukovich-idUSKCN1PI27B>.

<sup>5</sup> The Commission’s finding occurred on the same day that President Donald J. Trump held a private call with Ukraine’s president and threatened to withhold Congressionally-mandated aid unless he agreed to publicly launch politically motivated investigations targeting his political opponent President Joseph R. Biden and accusing Ukraine of interfering in the 2016 election in an attempt to bolster his re-election bid, conduct for which he was later impeached. Ledyard King, *From a ‘perfect’ call to a party switch: How we got to the impeachment of Donald Trump*, USA TODAY, (Dec. 18, 2019), <https://www.usatoday.com/story/news/politics/2019/12/18/trump-impeachment-path-vote-started-zelensky-call/2674518001/>.

<sup>6</sup> Both the statute and the regulation make it unlawful for a foreign national to directly or indirectly make a contribution in connection with federal, state or local elections.

<sup>7</sup> Factual and Legal Analysis, MUR 7271 at 7. Luke Barr and Alexander Mallin, *FBI Director Pushes Back on Debunked Conspiracy Theory About 2016 Election Interference*, ABC News (Dec. 9, 2019) (“We at the FBI have no information that would indicate that Ukraine tried to interfere in the 2016 presidential election,” quoting FBI Director Christopher Wray), <https://abcnews.go.com/Politics/fbi-director-pushes-back-debunked-conspiracy-theory-2016/story?id=67609244>.

Russian intelligence disinformation operation that “leveraged U.S. media, U.S.-based social media platforms, and influential U.S. persons to spread misleading and unsubstantiated allegations” against Americans to impact the 2020 U.S. election and damage U.S.-Ukraine relations.<sup>8</sup> The General Counsel’s unwillingness to even mention Mr. Telizhenko’s name in its brief speaks for itself.

Pursuant to the reason to believe finding, the Commission opened an investigation and determined that in March of 2016, Ms. Chalupa, acting at the behest of the DNC, by and through its Communications Director, Luis Miranda, asked a contact at the Ukrainian Embassy to “send a message” to President Poroshenko “indicating that Poroshenko should be prepared to address a question regarding Manafort at a public event hosted at the U.S. Capitol Visitor’s Center, where audience members were provided an opportunity to ask questions and that was attended by the media.”<sup>9</sup>

The General Counsel’s Brief concludes that “the record indicates that [Ms.] Chalupa requested that Poroshenko and the Ukrainian government assist in disseminating a negative message about Manafort, shortly after he joined the Trump campaign, for the purpose of influencing a federal election” and that Ms. Chalupa therefore “solicited a prohibited foreign national in-kind contribution.”<sup>10</sup> The General Counsel’s Office is prepared to recommend that the Commission find probable cause to believe that Ms. Chalupa violated 52 U.S.C. §30121(a)(2) and 11 C.F.R. § 110.20(g).

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<sup>8</sup> See, U.S. Department of the Treasury, *Treasury Takes Further Action Against Russian-linked Actors* (Jan. 11, 2021), <https://home.treasury.gov/news/press-releases/sm1232>. Mr. Telizhenko has also had his visa revoked by the U.S. State Department.

<sup>9</sup> General Counsel’s Brief at 2, 5. While in Washington, D.C. to attend the 2016 Nuclear Summit, President Poroshenko spoke at an event at the Capitol Visitor Center.

<sup>10</sup> *Id.* at 2, 26.

Because suggesting that a foreign national be prepared to answer a question at an open press event is neither a solicitation nor a contribution under the Act, and because the suggestion that someone be prepared to answer a question is exempt from the Commission's definition of a contribution under the long-standing Media Exemption, a finding of probable cause is entirely unwarranted in this matter. Were the Commission to find probable cause under the facts presented here it would be contrary to the plain language of the Commission's regulations and represent a strikingly overbroad interpretation. The Commission should not find probable cause to believe that Ms. Chalupa violated 52 U.S.C. §30121(a)(2) and 11 C.F.R. § 110.20(g), and after almost five years since the events in question, should close the file in this matter.<sup>11</sup>

## II. FACTS

Ms. Chalupa is an attorney, political strategist and human rights activist with expertise in national security issues as they relate to Ukraine, specifically the types of hybrid political warfare waged by the Russian Federation in its efforts to threaten global democracy.<sup>12</sup> She is the daughter of Ukrainians who immigrated to the United States as child refugees, and the granddaughter of Ukrainians who survived Joseph Stalin's man-made famine, purges, and prosecution, and fled their homeland during World War II; only to be captured and made forced

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<sup>11</sup> Over the last five years, Ms. Chalupa has faced significant online and digital harassment and has been subject to other acts of intimidation, including threats to her home and property. She intends to vigorously oppose any future determination by the Commission under the *Agency Procedure for Disclosure of Documents and Information in the Enforcement Process* (Disclosure Procedure) to place into the public record any portions of the investigatory file from this MUR that might jeopardize her personal and physical safety, as well as the safety of her family, including her children.

<sup>12</sup> See, Jovana Marovic, *Wars of Ideas: Hybrid Warfare, Political Interference and Disinformation*, CARNEGIE EUROPE (Nov. 18, 2019) (describing hybrid warfare as attempts to "destabilize a society by influencing its decisionmaking," using such tactics as electoral interference, disinformation and false news, and noting "Russia is the most frequently cited source of hybrid attacks, particularly disinformation, interference in elections and cyber attacks"), <https://carnegieeurope.eu/2019/11/28/wars-of-ideas-hybrid-warfare-political-interference-and-disinformation-pub-80419>.

labor prisoners in Nazi-occupied Germany, before migrating to the United States. She has lifelong personal ties to the Ukrainian diaspora and still has distant relatives in eastern Ukraine, where the Russian Federation continues to wage war against Ukraine.<sup>13</sup>

At the time of the events alleged in the Complaint, Ms. Chalupa was under contract as a part-time consultant for the DNC's Ethnic Engagement Program.<sup>14</sup> In that role, she, through her consulting firm, Chalupa & Associates, LLC, provided political outreach services to various ethnic constituencies around the country.<sup>15</sup> These services included planning and staffing roundtable discussions and events with representatives and members of ethnic constituencies, delivering speeches and presentations, writing and placing Op-Eds in specialty ethnic media, and engaging ethnic voters on the DNC's voter mobilization platforms.<sup>16</sup> Ms. Chalupa previously held other positions at the DNC, including Executive Director of Democrats Abroad, Director of the Office of DNC Vice Chairs, and Senior Advisor to the DNC Chair.<sup>17</sup>

In addition to her professional work, Ms. Chalupa has worked as a volunteer advocate for Ukrainian democracy and human rights causes since the Orange Revolution of 2004, a period of mass protest and civil disobedience in Kyiv following the 2004 Ukrainian presidential election, which was ultimately invalidated following widespread voter intimidation and electoral fraud.<sup>18</sup> In a variety of informal and appointed roles, Ms. Chalupa has volunteered countless hours over the years working to improve civil and human rights and advance democracy at home and abroad, including during the 2013-2014 Ukraine Crisis when she helped the Obama Administration engage the Ukrainian-American community in these efforts<sup>19</sup> As a volunteer she

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<sup>13</sup> Chalupa Aff. at 1.

<sup>14</sup> Chalupa Deposition, Exhibit 3 (Political Consulting Agreements with the DNC).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Chalupa Aff. at 1-2.

<sup>18</sup> Chalupa Aff. at 1.

<sup>19</sup> *Id.* at 3-4, 7-8.

has planned and participated in events promoting and celebrating Ukrainian culture and heritage in the United States and helped organize events, including national security and domestic policy briefings, at White House events honoring the contributions made by immigrants to America.<sup>20</sup>

Through her advocacy work, Ms. Chalupa became aware as early as 2008 that certain American political consultants, including Paul Manafort, were advancing the interests of Russian Federation president Vladimir Putin in Ukraine.<sup>21</sup> Mr. Manafort's relationships with pro-Russian politicians in Ukraine reach back to at least 2005 and are well-documented.<sup>22</sup> Ms. Chalupa and other members of the Ukrainian-American community felt strongly that Mr. Manafort's work in Ukraine and his ties to the Russian Federation were in direct conflict with the autonomous political and economic goals of Ukraine, as well as a threat to American and European Union foreign policy, and that his activities posed a serious national security risk.<sup>23</sup> They understood then that Mr. Manafort's work to advance Vladimir Putin's interests in Ukraine led to election of President Viktor Yanukovich, the Kremlin-backed leader who was ousted after months of protests, fled to Moscow after his government embezzled billions of dollars from Ukraine, and facilitated Russia's illegal annexation of Crimea, an ongoing conflict that continues to cause bloodshed today.<sup>24</sup>

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<sup>20</sup> *Id.* at 8-9. <sup>21</sup> Chalupa Aff. at 2.

<sup>21</sup> Chalupa Aff. at 2.

<sup>22</sup> Aleksandra Kharchenko, *Paul Manafort, Donald Trump's Top Advisor, and His Ties to Pro-Russian Politicians in Ukraine*, POLITIFACT (May 2, 2016), <https://www.politifact.com/global-news/article/2016/may/02/paul-manafort-donald-trumps-top-adviser-and-his-ti/>.

<sup>23</sup> Chalupa Aff. at 4, 10; Chalupa Dep. 102:2-103:5, 106:2-11.

<sup>24</sup> *Ukrainian Court Sentences Ex-President Yanukovich to 13 Years in Prison*, REUTERS (Jan. 24, 2019), <https://www.reuters.com/article/us-ukraine-crisis-yanukovich-idUSKCN1PI27B>; Shuan Walker and Oksana Grytsenko, *Ukraine's New Leaders Begin Search for Missing Billions*, THE GUARDIAN (Feb. 27, 2014) <https://www.npr.org/sections/thetwo-way/2014/04/02/298385578/yanukovich-i-was-wrong-to-ask-russian-troops-into-crimea>; Scott Neuman, *Yanukovich: I Was Wrong to Ask Russian Troops into Crimea*, NPR (Apr. 2, 2014), <https://www.npr.org/sections/thetwo-way/2014/04/02/298385578/yanukovich-i-was-wrong-to-ask-russian-troops-into-crimea>.

Accordingly, Ms. Chalupa was alarmed and distressed when it was reported on March 28, 2016 that Mr. Manafort had been hired by the presidential campaign of Donald Trump as convention manager for the Republican National Convention.<sup>25</sup> She immediately communicated her concerns to her colleagues at the DNC, expressing the view that “if Mr. Trump did not fire Manafort immediately then it was a direct indication that he was openly receiving support from Mr. Putin....”<sup>26</sup> Mr. Trump did not fire Mr. Manafort. Rather, he promoted him to Campaign Chair and Senior Strategist less than two months after he joined the campaign.<sup>27</sup> In 2019, Mr. Manafort was sentenced to seven and half years in prison for crimes including illegal lobbying in Ukraine, concealing ill-gotten gains, and encouraging witnesses to perjure themselves on his behalf.<sup>28</sup> Mr. Manafort was issued a presidential pardon by former President Trump in 2020.<sup>29</sup>

Based on what Ms. Chalupa knew about Mr. Manafort, his dangerous work in Ukraine and his ties to Mr. Putin and the Russian Federation, his presence on the campaign of a potential presidential nominee of a major American political party was deeply troubling from a national security standpoint.<sup>30</sup> At the direction the DNC’s Chief Executive Officer, Amy Dacey, Ms. Chalupa spoke with the DNC’s Director of Communications, Luis Miranda, and shared her

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<sup>25</sup> Alexander Burns & Maggie Haberman, *Donald Trump Hires Paul Manafort to Lead Delegate Effort*, N.Y. TIMES (Mar. 28, 2016) (noting that “Mr. Manafort has drawn attention in recent years chiefly for his work as an international political consultant, most notably as a senior adviser to former President Viktor F. Yanukovich of Ukraine, who was driven from power in 2014.”), <https://www.nytimes.com/politics/first-draft/2016/03/28/donald-trump-hires-paul-manafort-to-lead-delegate-effort/>

<sup>26</sup> Chalupa Aff. at 21; Chalupa Dep. at 181:4-189:5.

<sup>27</sup> Keneally, *supra* note 3 (“Manafort was promoted to campaign chair and chief strategist on May 19, effectively taking full command at that point.”)

<sup>28</sup> Spencer S. Hsu, Rachel Weiner & Ann E. Marimow, *Paul Manafort Sentenced to a Total of 7.5 Years in Prison for Conspiracy and Fraud, and Charged with Mortgage Fraud in New York*, WASH. POST. (Mar. 13, 2019), [https://www.washingtonpost.com/local/legal-issues/paul-manafort-faces-sentencing-in-washington-in-mueller-special-counsel-case/2019/03/12/d4d55dd4-44d0-11e9-aaf8-4512a6fe3439\\_story.html](https://www.washingtonpost.com/local/legal-issues/paul-manafort-faces-sentencing-in-washington-in-mueller-special-counsel-case/2019/03/12/d4d55dd4-44d0-11e9-aaf8-4512a6fe3439_story.html); *see also*, Amita Kelly, Ryan Lucas & Vanessa Romo, *Trump Pardons Roger Stone, Paul Manafort and Charles Kushner*, NPR (Dec. 23, 2020), <https://www.npr.org/2020/12/23/949820820/trump-pardons-roger-stone-paul-manafort-and-charles-kushner> (observing that while “Manafort made millions of dollars working for Yanukovich,” it was his work in Ukraine that “set the stage for [his] eventual prosecution and imprisonment”).

<sup>29</sup> Kelly, *et. al.*, *supra* note 21.

<sup>30</sup> Chalupa Aff. at 22; Chalupa Dep. at 192:18-196:8.

concerns about Mr. Manafort.<sup>31</sup> Mr. Miranda asked Ms. Chalupa to speak with his communications team about Mr. Manafort and provide information from the personal research she had previously conducted regarding Mr. Manafort and his work in Ukraine on behalf of Russian interests, which she did.<sup>32</sup> Mr. Miranda also asked Ms. Chalupa if she might see if President Poroshenko, who was in Washington for the 2016 Nuclear Summit, would be willing to answer a question from an ABC News reporter regarding Mr. Manafort's hiring by the Trump campaign at an event Ms. Chalupa and hundreds of other guests were scheduled to attend during his visit that was open to the press.<sup>33</sup>

Ms. Chalupa sent an email from her personal email account entitled "Important Press Opportunity" to Oksana Shulyar, who worked in the Ukrainian Embassy in Washington and who Ms. Chalupa had met weeks earlier while planning a Ukrainian cultural event.<sup>34</sup> In the email, Ms. Chalupa told Ms. Shulyar that: "[t]here is a very good chance that President Poroshenko may receive a question from the press during his visit" about Mr. Trump's hiring of Mr. Manafort, specifically, "whether President Poroshenko is concerned about this considering Trump is the likely Republican nominee and given Paul Manafort's meddling in Ukraine over the past couple of decades."<sup>35</sup> Ms. Chalupa opined that "[t]his is a huge opportunity to alleviate political pressure on Poroshenko's administration" by making it clear that Paul Manafort, "the same man who helped Yanukovich's puppet government come to power and advised him throughout the Ukraine crisis is now advising a top candidate for U.S. President ..."<sup>36</sup> On the email, Ms. Chalupa copied \_\_\_\_\_, a friend and prominent Ukrainian-American

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<sup>31</sup> Chalupa Aff. at 21-22.

<sup>32</sup> Chalupa Aff. at 22; Email from Ms. Chalupa to Mr. Miranda (Mar. 29, 2016 12:42 p.m.), Chalupa Dep. Ex. 6.

<sup>33</sup> Chalupa Aff. at 8, 22; Chalupa Dep. 208:10-11; 209:5-6.

<sup>34</sup> Email from Ms. Chalupa to Ms. Shulyar (Mar. 13, 2016, 3:19 p.m.), Chalupa Dep. Ex. 7

<sup>35</sup> *Id.* ("[i]n essence, this means that Putin and Trump now share the same advisor").

<sup>36</sup> *Id.*



activist who managed the largest Ukrainian-American community nonprofit, and shared Ms. Chalupa's concern about Mr. Manafort's role on the campaign..<sup>37</sup>

Ms. Chalupa has stated repeatedly that given what she viewed as the serious national security implications of Mr. Manafort's presence on the Trump campaign, she would have sent such an email to Ms. Shulyar to attempt to alert President Poroshenko about the opportunity to draw media attention to Mr. Manafort's hire, regardless of whether Mr. Miranda had ever asked her to reach out.<sup>38</sup> In fact, Ms. Shulyar, the person to whom the email was sent, stated that she understood Ms. Chalupa's suggestion was made as an "individual initiative stemming from her [Ms. Chalupa's] personal beliefs" and did "not remember anything indicating they were dictated or encouraged by the DNC."<sup>39</sup>

Ms. Chalupa's email to Ms. Shulyar went unanswered and at the event at the Capitol Visitor Center, Ms. Shulyar informed Ms. Chalupa that President Poroshenko would not entertain questions about Mr. Manafort, his ties to Ukraine, the Trump campaign or the U.S. presidential election.<sup>40</sup> Ms. Chalupa has confirmed that Ms. Shulyar dismissed the idea, and the General Counsel's Brief notes that there "is no record of Poroshenko receiving a question on Manafort" at the event "or otherwise conveying the message about Manafort that [Ms.] Chalupa communicated."<sup>41</sup> While it was very clearly Ms. Chalupa's strong personal conviction at the time that publicly exposing Mr. Manafort's activities in Ukraine and his relationship with the Russian Federation was vitally important for national security reasons, it would not be until years later

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<sup>37</sup> *Id.*; Chalupa Aff. at 10 (noting that \_\_\_\_\_ is "not a Democrat").

<sup>38</sup> Chalupa Dep. at 218:22-219:4 ("I would have done this on my own regardless of ever talking to Luis Miranda, wearing my national security hat, Ukrainian-American activist, I would have sent this email."); *id.* at 219:11-12 ("And I would have done this 100 percent with our without ever talking to anyone at the DNC.")

<sup>39</sup> Written Statement of Oksana Shulyar provided to the Federal Election Commission, June 9, 2020 at 3 ("Shulyar Written Statement").

<sup>40</sup> Shulyar Written Statement at 3 (stating that she "ignored" the email); Chalupa Aff. at 11; Chalupa Dep. at 241:11-12.

<sup>41</sup> Chalupa Dep. at 241:6-7, 10-11, 15-16.

that the damaging impact of Russian interference in the 2016 U.S. presidential election, and Mr. Manafort's role in it, was fully realized.<sup>42</sup>

### III. LEGAL ANALYSIS

The record fails to show that by informing Ms. Shulyar that “[t]here is a very good chance that President Poroshenko may receive a question [about the Trump campaign’s hiring of Mr. Manafort] from the press during his visit,”<sup>43</sup> Ms. Chalupa “knowingly solicit[ed]” a contribution from a foreign national in connection with a Federal election in violation of 52 U.S.C. § 30121(a)(2) or 11 C.F.R. § 110.20(g).<sup>44</sup> First, Ms. Chalupa’s suggestion that President Poroshenko be prepared to answer a potential question from the media, when reasonably viewed in context, does not constitute a solicitation under the Act. Second, even if the suggestion did constitute a solicitation, which it does not, the thing suggested, *i.e.*, that President Poroshenko be prepared to answer a question, is not a contribution under the Act. Finally, the suggestion that President Poroshenko be prepared to answer a question is also exempt from the definition of a contribution under the Commission’s long-standing Media Exemption.

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<sup>42</sup> Report of the Select Committee on Intelligence, United States Senate on Russian Active Measures Campaigns and Interference in the 2016 U.S. Election, S. Rpt. 116-290 (2020). All five volumes of the committee’s report can be found here: <https://www.intelligence.senate.gov/publications/report-select-committee-intelligence-united-states-senate-russian-active-measures>.

<sup>43</sup> Email from Ms. Chalupa to Ms. Shulyar (Mar. 13, 2016, 3:19 p.m.), Chalupa Dep. Ex. 7.

<sup>44</sup> It is highly ironic that the General Counsel’s Office is attempting to develop the Commission’s jurisprudence on the foreign national ban based on the facts presented here; given that the very subject of the question Ms. Chalupa suggested President Poroshenko be prepared to answer, Paul Manafort, is a felon whose illegal entanglements with foreign governments and foreign nationals were the source of his prosecution and conviction, yet who nevertheless rose to the highest levels of a U.S. presidential campaign – are exactly the kind of foreign influence the ban seeks to prevent. *See, Bluman v. FEC*, 800 F.Supp.2d 281, 288 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012) (recognizing “straightforward principle” that government has a compelling interest in “preventing foreign influence over the U.S. political process” through the foreign national ban).

### A. Ms. Chalupa's Email Was Not A Solicitation.

It is well-settled that a foreign national cannot make monetary or in-kind contributions in connection with U.S. elections.<sup>45</sup> Nor is it disputed here that Ms. Shulyar, to whom Ms. Chalupa suggested President Poroshenko be prepared to answer the never-asked question from the media and President Poroshenko himself are “foreign nationals” under the meaning of the Act.<sup>46</sup> The General Counsel’s Brief maintains that the record “indicates that [Ms.] Chalupa asked a foreign national, the head of a foreign government, to use the authority of his office and expend resources to prepare and publicly disseminate a negative message about a recently-hired Trump campaign official in order to influence the 2016 presidential election.”<sup>47</sup> To the contrary, the record is clear that Ms. Chalupa’s email, suggesting that “President Poroshenko *may* receive a question from the press during his visit” regarding Mr. Manafort, as was reasonably understood by Ms. Shulyar was not a request to “expend resources” and does not constitute a solicitation under the Act.<sup>48</sup>

The Commission’s regulations state that “to solicit means to ask, request, or recommend, explicitly or implicitly, that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.”<sup>49</sup> A solicitation is further defined as “an oral or written communication that, construed as reasonably understood in the context in which it is made, contains a clear message asking, requesting, or recommending that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value.”<sup>50</sup> And while solicitations do not require the use “of particular ‘magic words’ or specific phrases,” the

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<sup>45</sup> 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b).

<sup>46</sup> 52 U.S.C. § 30121(b)(2); 11 C.F.R. § 110.20(a)(3) (defining “foreign national”).

<sup>47</sup> Gen. Counsel’s Br. at 9.

<sup>48</sup> Email from Ms. Chalupa to Ms. Shulyar (Mar. 13, 2016, 3:19 p.m.), Chalupa Dep. Ex. 7.

<sup>49</sup> 11 C.F.R. § 300.2(m).

<sup>50</sup> *Id.*

Commission has emphasized that solicitations must be “reasonably construe[d] in context” and that the “Commission’s objective standard hinges on whether the recipient should have reasonably understood that a solicitation was made.”<sup>51</sup>

The General Counsel’s Brief contends that “the recipients of [Ms.] Chalupa’s email ‘should have reasonably understood’ that [Ms.] Chalupa was asking [President] Poroshenko to convey a particular message rather than merely alerting them to a potential situation they might need to address.”<sup>52</sup> But the conditional language of Ms. Chalupa’s email, coupled with Ms. Shulyar’s prior relationship with Ms. Chalupa and her beliefs about Ms. Chalupa’s motivation for sending the email firmly contradict this assumption.

When “construed as reasonably understood in the context in which it” was made, Ms. Chalupa’s email to Ms. Shulyar does not constitute a solicitation.<sup>53</sup> The email is premised entirely on the *possibility* that a question regarding Mr. Manafort *might* be asked of President Poroshenko, and that President Poroshenko *should* be “prepared to address this question *should it come up*.”<sup>54</sup> Rather than containing a “clear message ... recommending that another person make a contribution,” or take any other affirmative action, the email is clearly more of a “heads up” or alert about some uncertain future event.<sup>55</sup> The email does not state with any certainty that a question will be asked, only that it is a possibility. Nor does request that Ms. Shulyar “expend resources to prepare and publicly disseminate a negative message” about Mr. Manafort’s hiring.

The context of Ms. Shulyar and Ms. Chalupa’s relationship is highly relevant in this analysis. Ms. Shulyar met Ms. Chalupa through Ms. Chalupa’s volunteer work as a Ukrainian-

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<sup>51</sup> Definitions of “Solicit” and “Direct,” 71 Fed. Reg. 13,926, 13,928 (Mar. 20, 2006). *See also*, First Gen. Counsel’s Report at 5, MUR 7135 (Donald J. Trump for President, Inc., *et al.*) (reiterating standard used for evaluating solicitations).

<sup>52</sup> Gen. Counsel’s Br. at 13-14.

<sup>53</sup> 11 C.F.R. § 300.2(m).

<sup>54</sup> Email from Ms. Chalupa to Ms. Shulyar (Mar. 13, 2016, 3:19 p.m.), Chalupa Dep. Ex. 7.

<sup>55</sup> 11 C.F.R. § 300.2(m).

American activist and advocate while planning a Ukrainian cultural event.<sup>56</sup> While Ms. Shulyar was aware that Ms. Chalupa held a part-time consultancy at the DNC, the lengthy email in question, sent from Ms. Chalupa's personal email account, makes virtually no mention of the DNC.<sup>57</sup> Given her relationship with Ms. Chalupa and the content of the email, it was entirely reasonable for Ms. Shulyar to view the email as one sent by Ms. Chalupa in her personal or activist capacity, which was the primary way in which she knew Ms. Chalupa.

Ms. Shulyar has provided the Commission with not one, but two, written statements in which she clearly states that she viewed Ms. Chalupa's email as part of Ms. Chalupa's attempts as a Ukrainian-American activist to "publicly alert the American people about the potential risks of Paul Manafort's previous involvement [in Ukraine]."<sup>58</sup> Ms. Shulyar viewed the email as "Alexandra Chalupa's individual initiatives stemming from her personal beliefs" and stated "I do not remember anything indicating they were dictated or encouraged by the DNC."<sup>59</sup> Ms. Shulyar also stated that she did not view Ms. Chalupa's email as a request that President Poroshenko "and his staff prepare and convey ... negative messaging about Trump's campaign advisor, which would help the DNC in the 2016 election," but rather as a way to "stir a publicly open discussion by amplifying information that had been already publicly available" regarding Mr. Manafort and his activities in Ukraine to further the Russian Federation's goal of having a political hold over Ukraine's government.<sup>60</sup> Finally, it is worth noting that on the email, Ms. Chalupa copied \_\_\_\_\_, a fellow Ukrainian-American activist whom she knew to

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<sup>56</sup> Shulyar Written Statement at 1-2; Chalupa Aff. at 7-8.

<sup>57</sup> Shulyar Written Statement at 2; Email from Ms. Chalupa to Ms. Shulyar (Mar. 13, 2016, 3:19 p.m.), Chalupa Dep. Ex. 7.

<sup>58</sup> Shulyar Written Statement at 3; Oksana Shulyar Additional Points and Elaborations provided to the Federal Election Commission, July 2020 ("Shulyar Additional Points").

<sup>59</sup> *Id.* Shulyar Additional Points ("I can reconfirm that based on Alexandra's [Ms. Chalupa's] communication and presentation, I had got a strong impression that it [having a question asked about Paul Manafort] was her personal initiative and cause.")

<sup>60</sup> Gen. Counsel's Br. at 12; Shulyar Written Statement at 4.

identify politically as a Republican or an Independent, which surely would be an odd thing to do if the email was being sent on behalf of the DNC.<sup>61</sup>

Ms. Chalupa's email, when construed as reasonably understood in the context in which it was made, does not constitute a solicitation for a contribution from a foreign national under 52 U.S.C. § 30121(a)(1) or 11 C.F.R. § 110.20(b). Given her prior relationship with Ms. Chalupa it was eminently reasonable that Ms. Shulyar viewed the email not as a solicitation for a contribution on behalf of the DNC, but as a request made in Ms. Chalupa's personal activist capacity as a chance for President Poroshenko to bring attention to Mr. Manafort's hiring, based on publicly available information, and then only if the opportunity were to come up, which it did not. President Poroshenko did not receive a question about Mr. Manafort at the Capitol Visitor's Center and the Embassy of Ukraine never expended funds to prepare or disseminate a negative message about Mr. Manafort.<sup>62</sup>

#### **B. Ms. Chalupa Did Not Request a Contribution or Thing of Value.**

Just as Ms. Chalupa's email to Ms. Shulyar suggesting that President Poroshenko be prepared to answer a question at a public event does not constitute a "solicitation," it is also not a "contribution" under the Act. The Act defines a "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purposes of influencing any election for Federal office."<sup>63</sup> "Anything of value" is not limited to direct financial contributions, but also includes in-kind contributions, that is, "goods or services provided to a political committee without charge or at a rate that is less than the usual and normal

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<sup>61</sup> Chalupa Aff. at 10; Chalupa Dep. at 167:10-21.

<sup>62</sup> Gen. Counsel's Br. at 14.

<sup>63</sup> 52 U.S.C. § 30101(8)(a)(i); 11 C.F.R. § 110.52(a).

charge.<sup>64</sup> The “usual and normal charge” is defined as the price of goods “in the market from which they ordinarily would have been purchased at the time of the contribution,” or the “commercially reasonable rate prevailing at the time the services were rendered.”<sup>65</sup>

Ms. Chalupa’s suggestion that President Poroshenko be prepared to answer a question at a public event is not a thing of value, and therefore cannot be an in-kind contribution under the Act. Quite simply, the suggestion that someone be prepared to answer a prospective question is not a “good or service” whose value can be assessed in a market from which it would have “ordinarily” been purchased. There is no “commercially reasonable rate” for suggesting someone be prepared to answer a question. And unless the Commission anticipates the ability to regulate all human behavior through 11 C.F.R. 100.52(d)(2), the General Counsel’s argument must fail.

The Commission’s regulations include a non-exhaustive list of goods or services that, if offered at no charge or for a reduced charge, constitute an in-kind contribution, including “[s]ecurities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.”<sup>66</sup> Other goods and services recognized as in-kind contributions have included “a gold coin; a rent stabilized apartment; an original work of art to be created by an artist for use in fundraising; an activist’s contact list; a severance payment; and the production elements for a benefit concert ....”<sup>67</sup> While covering a broad range, what makes these goods or services things of value or in-kind contributions is that they “spare the campaign’s own resources,” that is, they

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<sup>64</sup> 11 C.F.R. § 100.52(d)(2).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> First Gen. Counsel’s Report, at 11-12, MUR 6651 (Murray Energy Corp., *et al.*) (internal footnotes omitted).

are something for which the campaign would have made an expenditure, but for the in-kind contribution.<sup>68</sup>

All of the examples cited in the General Counsel’s Brief are distinguishable from the facts presented here. The provision of poll results paid for by a campaign volunteer,<sup>69</sup> the printing of election materials, including “flyers, advertisements, door hangers, tri-folds, signs and other printed material,”<sup>70</sup> contact lists provided without charge,<sup>71</sup> – these are all goods or services that can be assigned an independently verifiable value so that they can be properly reported on the committee’s disclosure reports.<sup>72</sup> This ability to place a monetary value on in-kind contributions lies at the very heart of the Commission’s mission of increasing transparency with respect to contributions and expenditures made to influence federal elections.<sup>73</sup>

It is public knowledge that there are other matters currently pending before the Commission that address the solicitation of in-kind contributions from foreign nationals and the preparation and solicitation of negative messaging regarding political opponents.<sup>74</sup> Specifically, the matter designated as MUR 7266, which concerns the alleged attempts of Jared Kushner, Paul Manafort and Donald Trump, Jr. to obtain political opposition research generated by the Russian

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<sup>68</sup> Gen. Counsel’s Br. at 15. See, First Gen. Counsel’s Report, MUR 6651 (discussing importance of crowd size to candidates and the “commercial market” that exists to raise event crowds).

<sup>69</sup> Advisory Op. 1990-12 (Strub for Congress) at 2.

<sup>70</sup> Advisory Op. 2007-22 (Hursyz) at 6.

<sup>71</sup> First Gen. Counsel’s Report at 10, MUR 5409 (Norquist).

<sup>72</sup> See, First Gen. Counsel’s Report at 13, MUR 6651 (discussing importance of crowd size to candidates and the “commercial market” that exists to raise event crowds).

<sup>73</sup> The Commission’s own guidance on reporting in-kind contributions is instructive, recognizing that the value of the in-kind contribution is “the usual and normal charge.” See, How to Report In-kind Contributions, available at: <https://www.fec.gov/help-candidates-and-committees/filing-reports/in-kind-contributions/>.

<sup>74</sup> Press release announcing Complaint available at: <https://campaignlegal.org/press-releases/trump-jr-kushner-manafort-violated-foreign-solicitation-ban-watchdogs-allege>. Complaint available at: [https://campaignlegal.org/sites/default/files/7\\_13\\_17%20CLC%20CC%20D21%20Trump%20Jr.%20et%20al.%20FEC%20complaint.pdf](https://campaignlegal.org/sites/default/files/7_13_17%20CLC%20CC%20D21%20Trump%20Jr.%20et%20al.%20FEC%20complaint.pdf). See also, Supplemental Complaint, available at: <https://campaignlegal.org/sites/default/files/2019-04/04-30-19%20Don.%20Jr.%20supplement%20MUR%207266%20%28final%29.pdf>



government to assist Donald Trump’s candidacy and damage his opponent, Hillary Clinton.<sup>75</sup>

But Ms. Chalupa’s email suggesting that President Poroshenko be prepared to answer a potential question from the media, even if given the most liberal interpretation, cannot be compared to Donald Trump Jr.’s attempts to receive political opposition research about Hilary Clinton, prepared by the Russian government, in an effort to assist his father’s campaign.<sup>76</sup>

Opposition research is clearly a thing of value under the Act and the Commission’s regulations. Like polling, printed material and contact lists, opposition research is a good or service that campaigns routinely pay for, and report, on their campaign finance reports.<sup>77</sup> By contrast, no market exists to assign a value to the suggestion that someone be prepared to answer a question from the media at a public event, and an attempt to create one would be an exercise that would border on the absurd. Nor does a market exist for “information” generally, absent a way to assign quantifiable economic value to the information.<sup>78</sup> As part of the Commission’s recent attempt to clarify prohibited activities concerning foreign nationals, Commissioner Weintraub noted that “soliciting, accepting or receiving information in connection with an election from a foreign national, *as opposed to purchasing the information at the usual and normal charge . . .*, could potentially result in the receipt of a prohibited in-kind contribution.”<sup>79</sup>

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<sup>75</sup> In fact, it has been reported the Complaint in this matter was filed at the behest of the Trump White House, and by its own admission, FACT openly plagiarized the complaint that led to MUR 7266. See, Murray Waas, *Matthew Whitaker: The Ethical Mire of Trump’s Top Law Officer*, NEW YORK REV. OF BOOKS, (Jan. 15, 2019) (detailing the political motivation for the filing of the complaint), <https://www.nybooks.com/daily/2019/01/15/matthew-whitaker-the-ethical-mire-of-trumps-top-law-officer/>; Compl. at 1, n. 1 (“Much of the language in this complaint is taken verbatim from a recent complaint filed by Common Cause, the Campaign Legal Center, Democracy 21” *et al.*)

<sup>76</sup> MUR 7266, Complaint, *supra* n. 74.

<sup>77</sup> See *e.g.* CAMPAIGNS AND ELECTIONS, Campaign Insider, Consultant Directory (listing opposition research firms) available at: <https://www.campaignsandelections.com/politicalpages/categories/opposition-research>.

<sup>78</sup> See *e.g.*, Eugene Volokh, *Can it be a Crime to do Opposition Research by Asking Foreigners for Information?* WASH. POST (July 12, 2017), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/07/12/can-it-be-a-crime-to-do-opposition-research-by-asking-foreigners-for-information/>.

<sup>79</sup> See, Draft Interpretive Rule Concerning Prohibited Activities Involving Foreign Nationals (Sept 26, 2019)(emphasis added), available at [https://www.fec.gov/resources/cms-content/documents/mtgdoc\\_19-41-A.pdf](https://www.fec.gov/resources/cms-content/documents/mtgdoc_19-41-A.pdf). In addition, simply talking to a foreign national does not result in a contribution. See, AO 2007-22 (where the

But as this statement makes perfectly clear, there must be a way to *purchase* the information at a “usual and normal charge.”<sup>80</sup> Otherwise, it is impossible to assign a reportable value to the information.<sup>81</sup>

There is nothing in the record to support the General Counsel’s suggestion that Ms. Chalupa sought to have a foreign national “use the authority of his office and expend resources to prepare and publicly disseminate a negative message about a recently-hired Trump campaign official in order to influence the 2016 presidential election.”<sup>82</sup> Nothing in the record suggests that Ms. Chalupa sought to have Ms. Shulyar or President Poroshenko’s staff create some kind of dossier or opposition research binder on Mr. Manafort.<sup>83</sup> And Ms. Shulyar has clearly stated that she viewed Ms. Chalupa’s email as a request to discuss information that was already public and available, not to “expend resources” to create, prepare or package any new information for the purpose of damaging a political opponent.<sup>84</sup> While this would nicely fit the General Counsel’s theory that Ms. Chalupa’s suggestion amounted to a thing of value, *i.e.* quantifiable opposition research, it simply did not happen.

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Commission approved “[c]onsulting with Canadian citizens” to learn about their election activities as an activity that could be conducted without payment to avoid taking a contribution from a foreign national.

<sup>80</sup> See, Volokh, *supra* n. 70 (discussing Rick Hasen’s argument that “campaigns taking ‘compiled information’ for free that they would have paid significant value to receive from a foreign source” would be a violation but that the one-time receipt of information that was not compiled would be constitutionally protected.)

<sup>81</sup> See *e.g.*, Dahlia Lithwick, *Is Donald Trump, Jr. Guilty of Treason?* SLATE (Jul. 11, 2017) (Quoting Stanford University Prof. Robert Weisburg “while the courts allow some flexibility beyond actual cash or easily monetizable value, it [a thing of value] has to have some economic salience to it”), <https://slate.com/news-and-politics/2017/07/donald-trump-jr-isnt-guilty-of-treason-but-he-likely-committed-this-other-crime.html>. See also, Frank Bowman, *Criminal Election Law Violations by Trump Jr. and Company? I Don’t Think So*, IMPEACHABLE OFFENSES (Jul. 27, 2017)(in the campaign finance context, “the law is better understood to refer to things that have readily quantifiable economic value”), <https://impeachableoffenses.net/2017/07/12/criminal-election-law-violations-by-trump-jr-and-company-i-dont-think-so/>.

<sup>82</sup> Gen. Counsel’s Br. at 9.

<sup>83</sup> Save for the deposition of Andrii Telizhenko, whose statements to this effect are a “total fabrication,” “not true,” “absolutely unthinkable and impossible” and flat out lies. Shulyar Additional Points. Again, the unwillingness of the General Counsel to rely on Mr. Telizhenko’s deposition in the brief is dispositive as to the truthfulness of his allegations.

<sup>84</sup> Shulyar Written Statement at 4.

Ms. Chalupa has repeatedly stated that her intention in sending the email to Ms. Shulyar was not to solicit a political contribution, but an attempt to shine a light on what she viewed then as a grave national security threat – Paul Manafort’s dangerous and criminal ties to the government of Russia, manifested through his work in Ukraine.<sup>85</sup> And of course, time has now proven what Ms. Chalupa knew then to be true. While the General Counsel’s brief tries to diminish Ms. Chalupa’s stated intention, it does so by conveniently ignoring the serious danger posed by Mr. Manafort’s presence on the Trump campaign – one the bi-partisan report of the U.S. Senate Intelligence Committee found “represented a grave counter-intelligence threat” during the 2016 presidential race.<sup>86</sup> The report also determined that “Manafort's presence on the Campaign and proximity to Trump created opportunities for Russian intelligence services to exert influence over, and acquire confidential information on, the Trump campaign.”<sup>87</sup> Mr. Manafort was a clear and grave danger to national security, and Ms. Chalupa’s suggestion that President Poroshenko be prepared to answer a question about his hiring by the Trump campaign, despite the surrounding circumstances, was not a request for a political contribution.<sup>88</sup>

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<sup>85</sup> Chalupa Dep. at 218:22-219:12.

<sup>86</sup> Kristine Phillips and Kevin Johnson, *Paul Manafort Was ‘a Grave Counter-Intelligence Threat,’ Republican-led Senate Panel Finds*, USA TODAY (Aug. 18, 2020), <https://www.usatoday.com/story/news/politics/2020/08/18/senate-details-paul-manafort-ties-russian-intel-officer-kilimnik/3390437001/>. See, Report of the U.S. Senate Select Committee on Intelligence, supra n. 36.

<sup>87</sup> *Id.*

<sup>88</sup> Arguably, having the public made aware of Mr. Manafort and his misdeeds earlier in the election cycle could have conferred a benefit on the Trump campaign. Had Mr. Manafort been immediately terminated, the Trump campaign could have possibly avoided the public relations and legal troubles his ties to Russia caused them following the Republican convention and until his resignation, and continue to cause to this day. See, Meghan Keneally, *Timeline of Paul Manafort’s Role in the Trump Campaign*, ABC NEWS (Oct. 20, 2017) (citing ongoing questions into Mr. Manafort’s work in Ukraine and tied to Russia), <https://abcnews.go.com/Politics/timeline-paul-manafort-role-trump-campaign/story?id=50808957>.

### **C. Suggesting a Response to a Question is Not a Contribution Under the Act Under the Media Exemption.**

Finally, Ms. Chalupa's suggestion that President Poroshenko be prepared to answer a question regarding Mr. Manafort is exempt from the definition of a "contribution" under the Commission's long-standing Media Exemption. The Media Exemption was included in the Act so as to "make it plain that it [was] not the intent of Congress ... to limit or burden in any way the first amendment freedoms of the press .... [The Media Exemption] assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns."<sup>89</sup> Specifically, the Media Exemption exempts from the Act's definition of a contribution "[a]ny cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), Web site, newspaper, magazine, or other periodical publication, including any Internet or electronic publication" unless the media outlet is owned and operated by a political party or candidate.<sup>90</sup> Even if the media outlet is owned and operated by a political party or candidate, the costs of the news story are not a contribution if the story is a "bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility;" and "part of a general pattern of campaign-related news accounts."<sup>91</sup>

Ms. Chalupa's suggestion that President Poroshenko be prepared to answer a question about a relevant topic pertaining to the 2016 presidential election is at the heart of "the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." As such, she was suggesting President Poroshenko do something which cannot be a contribution because it is exempt from the Commission's definition of a contribution as

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<sup>89</sup> H.R. Rep. No. 93-1239, at 4 (1974); Advisory Opinion 2019-05 at 4.

<sup>90</sup> 11 C.F.R. § 100.73.

<sup>91</sup> 11 C.F.R. § 100.73a & b.

protected speech under the First Amendment. Had President Poroshenko actually been asked and answered a question about Mr. Manafort and had it been reported on or covered by ABC News or any other media outlet present, there is no question that it would have qualified as a “bona fide news account,” as opposed to some kind of partisan “plug” for the DNC or any democratic candidate. In addition, a foreign national or a foreign head of state like President Poroshenko has the ability to speak freely on U.S. soil without making a political contribution.<sup>92</sup>

Though the General Counsel’s brief makes much of the “unique, non-public deliverable” President Poroshenko could have delivered to the DNC if he had answered such a question, the reality is that though the illicit nature of Mr. Manafort’s ties to Ukraine were not yet widely known, the media had already shown interest in the story and his hiring by the Trump campaign was a newsworthy event.<sup>93</sup> Had President Poroshenko answered a question about Mr. Manafort in such a way that it generated negative press coverage for the Trump campaign, it would have placed before the voters relevant and important information regarding Mr. Trump’s judgment and sympathies. Campaign finance laws and regulations cannot serve to limit the right of a free press to place relevant issues in front of American voters as they engage in the process of selecting their elected representatives.<sup>94</sup> Ms. Chalupa’s suggestion that President Poroshenko be prepared to answer a question about Mr. Manafort exempt from the Commission’s definition of a contribution under the Media Exemption and therefore was not unlawful under 52 U.S.C. § 30121(a)(1) or 11 C.F.R. § 110.20(g).

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<sup>92</sup> *Bluman*, 800 F. Supp. 2d at 290 (Section 441e(a) “does not restrain foreign nationals from speaking out about issues”).

<sup>93</sup> Gen. Counsel’s Br. at 18-20; Burns and Haberman, *supra* n. 19 (“Mr. Manafort has drawn attention in recent years chiefly for his work as an international political consultant, most notably as a senior adviser to former President Viktor F. Yanukovich of Ukraine, who was driven from power in 2014”).

<sup>94</sup> *See*, Volokh, *supra* n. 70 (“[L]imiting candidates’ ability to expose their opponents’ misbehavior would violate the First Amendment, and no interest in “barring foreign interference” could justify such a restriction.”)

#### IV. Conclusion

Ms. Chalupa's years of personal activism to help advance democracy and human rights in Ukraine provided her with an awareness of Mr. Manafort's unlawful activity in Ukraine well before his actions became widely known and well before his ultimate trial and conviction for crimes involving Ukraine. As early as 2014, she was sharing her concerns about Mr. Manafort with a member of the National Security Council and Congressional staff.<sup>95</sup> Ms. Chalupa's attempts to warn others about Mr. Manafort and his ties to Russia, well before the Russian interference in the 2016 election were discovered, are nothing short of heroic and patriotic.

For almost five years, Ms. Chalupa has been the target of an aggressive disinformation operation advanced by foreign agents, including several currently on the U.S. Treasury Department sanctions list. She has been harassed by online trolls, proxies of the Kremlin, and U.S. officials, including Members of Congress who promoted a false narrative about her that originated in Moscow and was designed to discredit her and damage her reputation.<sup>96</sup> Her home, where she resides with her husband and three young daughters, has been the target of surveillance and active measures, which resulted in damage to her property and threatened her family's safety. She has been the target of additional, coordinated "lawfare" operations meant financially cripple her family, while attempting to silence her. This is the price she has paid because she sounded the alarm about a person the U.S. Senate Intelligence Committee determined "represented a grave counter-intelligence threat" to our national security during the

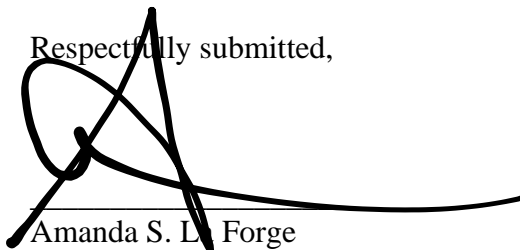
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<sup>95</sup> Chalupa Aff. at 4-6.

<sup>96</sup>Murray Waas, *Matthew Whitaker: The Ethical Mire of Trump's Top Law Officer*, The New York Review, (Jan. 15, 2019), <https://www.nybooks.com/daily/2019/01/15/matthew-whitaker-the-ethical-mire-of-trumps-top-law-officer/>; Asha Rangappa and Ryan Goodman, *Manafort's Reward: Senator Johnson and the Ukraine Conspiracy Investigation Part II*, Just Security (Aug. 24, 2020), <https://www.justsecurity.org/72148/manaforts-reward-sen-ron-johnson-and-the-ukraine-conspiracy-investigation-part-ii/>.

2016 presidential election. The Commission should not find probable cause to believe that Ms. Chalupa and Chalupa & Associates, LLC violated 52 U.S.C. § 30121(a)(2) and 11 C.F.R. § 110.20(g), or any of the other alternative violations recommended by the General Counsel,<sup>97</sup> and should promptly close the file in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Amanda S. La Forge'. The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.

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<sup>97</sup> Gen. Counsel's Br. at 26, fn. 106 (stating "we are prepared to recommend that the Commission find probable cause to believe [Ms.] Chalupa violated 11 C.F.R. § 110.20(h) if the Commission does not find probable cause to believe [Ms.] Chalupa violated 11 C.F.R. § 110.20(g)").