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Federal Election Commission
Office of the General Counsel
Attn: Saurav Ghosh
1050 First Street, NE
Washington, D.C. 20463
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Re: MURs 7350, 7351, and 7382

Dear Mr. Ghosh:

I write on behalf of Respondent Alexander Nix in response to the Factual & Legal Analysis and accompanying Questions and Document Requests issued by the Commission on August 27, 2019. The extent of Mr. Nix's personal knowledge of the facts and circumstances underlying these enforcement matters is catalogued extensively in his response to the complaints, his comprehensive supporting declaration, and accompanying exhibits. Further, most of the documents and materials sought by Commission's requests are stored on servers of the now-defunct Cambridge Analytica, and hence are outside Mr. Nix's possession, custody, or control. For these reasons, it is Mr. Nix's position that he has wholly and thoroughly rebutted the complaints' allegations that he improperly participated in any political committee's decisions concerning election-related activities, as prohibited by 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

More fundamentally, Mr. Nix submits that the Commission's reason to believe ("RTB") findings are afflicted with at least four significant legal and analytical flaws.

First, in relying almost entirely on news media accounts—most of which in turn invoke anonymous or otherwise unidentified sources—the Commission deviates from the settled precept that only allegations premised on the sworn averments of a complainant can sustain RTB findings. *See generally* 11 C.F.R. § 111.4(b)(2), (c). Indeed, as two of the Commissioners who approved the RTB findings explained on another occasion, “unsworn news reports by authors who are not first-hand complainants or witnesses before the Commission present legal and practical problems for the Commission and respondents and, in any event, may be of limited probative value.” MUR 6518 (Newt Gingrich), Statement of Reasons of Commissioners Petersen, Hunter & Goodman at 6-7; *see also* MUR 6540 (Santorum), Statement of Reasons of Commissioners McGahn and Hunter at 11 n.33 (“[T]he Commission has already determined that news articles standing alone are insufficiently reliable to support a reason to believe finding. . . . Thus, there are fundamental issues with relying on newspaper articles as the source of information for finding RTB regardless of the avenue in which they are used. Articles are notoriously inaccurate and are often reliant on anonymous sources.”).

Second, even in circumstances where news media articles can properly buttress a *prima facie* claim of a violation, the Commission has consistently recognized that the respondent's specific, sworn rebuttals of the

allegations defeat any inference of wrongdoing. *See, e.g.*, MUR 5843 (ACORN), Statement of Reasons of Commissioners Lenhard and Weintraub (noting that OGC had recommended finding no reason to believe that violations had occurred where complaint was predicated on statements in Internet video and news article, and respondent “provided sworn statements denying the allegations”); MUR 6817 (Wehby), First General Counsel’s Report at 12 (recommending dismissal in light of “explicit and sworn denial” based on personal knowledge); MUR 6276 (Weiser), Factual & Legal Analysis at 8 (sworn declarations rebutted complaint predicated on news article). Here, not only were the RTB findings derived almost exclusively from unsworn media accounts purporting to relay the unsworn statements of a disaffected former Cambridge Analytica employee, Christopher Wylie, but Mr. Nix’s declaration—signed under penalty of perjury—directly and explicitly rebutted virtually all of Wylie’s charges.

For example, the Commission uncritically adopts Wylie’s assertion that he “was personally part of ‘multiple conference calls in 2014’ with Nix and Stephen K. Bannon, a Cambridge board member, in which ‘strategic campaign matters were discussed.’” Factual & Legal Analysis at 11. As an initial matter, it is unclear why any statement attributed to Wylie—a disgruntled former employees whose prior false charges against Cambridge Analytica have been repeatedly and systematically debunked by independent third parties, *see* Nix Decl. ¶¶ 20-22—should be accorded any facial credibility.¹ More substantively, Mr. Nix has asserted under oath that he “did not personally engage in substantive work regarding the conduct of individual political campaigns for any of [Cambridge Analytica’s] United States political clients.” *Id.* ¶ 24. Indeed, the complaint never alleges that Mr. Bannon was an agent or representative of any U.S. political committee at the time of the alleged conversation; thus, even if Wylie’s account were accurate, it would not evidence any violation of 52 U.S.C. § 30121 or 11 C.F.R. § 110.20(i). In the same vein, Mr. Nix’s specific, sworn denials easily refute the putative statements of anonymous Cambridge Analytica staffers who allegedly told the *Guardian* newspaper that they “were still answering ultimately to” Mr. Nix, *see* Factual & Legal Analysis at 11 & n.46. *See* MUR 6540 (Santorum), Statement of Reasons of Commissioners McGahn and Hunter at 11 n.33 (noting that “if anonymous complaints are prohibited by the Act, it is illogical to permit the underlying basis for a complaint to be an anonymous source in a newspaper article”).²

Third, the Factual & Legal Analysis consistently conflates the operations of Cambridge Analytica itself and the alleged activities of third-party Cambridge Analytica employees with the conduct of Mr. Nix personally. The distinction is factually material and legally dispositive; only the latter can sustain RTB findings (and, ultimately, liability) with respect to Mr. Nix himself. *See* Nix Response at pp. 8-9. To this end, the Commission’s mode of reasoning appears to be that if Mr. Wylie or an anonymous source is reported to have stated that a non-U.S. national Cambridge Analytica employee participated in the decision-making of a U.S. political committee, it follows *ipso facto* that Mr. Nix himself partook of the same conduct.

¹ In the same vein, Wylie’s employment with Cambridge Analytica terminated in July 2014, and thus he necessarily could not possess personal knowledge of any ostensible communications or activities that allegedly occurred after that time. *See* Nix Decl. ¶¶ 18-19. Despite Mr. Nix’s sworn averment on this point, the Commission insists that the timing of Wylie’s departure is “controverted” by virtue of Wylie’s self-serving say-so to a *New York Times* reporter. *See* Factual & Legal Analysis at 3 n.9.

² The Commission’s reflexive deference to the *Guardian*’s reportorial assurances assumes a particular irony in light of Mr. Nix’s observation that the newspaper’s prior reliance on Mr. Wylie as a source of information concerning Cambridge Analytica and SCL Elections resulted in a retraction and correction. *See* Nix Decl. ¶ 22(c).

By way of illustration, certain news accounts quote Mr. Wylie as alleging that foreign nationals employed by Cambridge Analytica participated in strategic decisions for Thom Tillis’s U.S. Senate campaign in North Carolina. *See* Factual & Legal Analysis at 13. The Commission not only uncritically accepts these dubious assertions, but then embraces the inferential leap that Mr. Nix personally engaged in these activities, despite the absence of any record evidence implicating Mr. Nix in these political committees’ operations and Mr. Nix’s sworn avowals that he “did not personally engage in substantive work regarding the conduct of individual political campaigns for any of [Cambridge Analytica’s] political clients,” and had “little to no knowledge of, or involvement in, the day-to-day management and operation of [Cambridge Analytica’s] client engagements in the United States.” Nix Decl. ¶¶ 24-25. These averments are fortified by Mr. Nix’s sworn representations in connection with specific Cambridge Analytica engagements, such as the Tillis campaign and the John Bolton Super PAC. As affirmed under oath, Mr. Nix “had no personal involvement in [the] provision of services to the Tillis campaign” and, to the best of his knowledge, no foreign national (including Mr. Nix himself) “ever provided strategic advice directly to the John Bolton Super PAC or otherwise participated in any of the organization’s decisions concerning its expenditures, finances, or operations.” *Id.* at ¶¶ 46, 48.

Fourth, embedded in the Factual & Legal Analysis is a substantial and consequential abrogation of the Commission’s prior regulatory guidance concerning the scope and application of 11 C.F.R. § 110.20(i). For years, the Commission has maintained that Section 110.20 does not prohibit foreign nationals from “engaging in conduct that merely ‘influences the decision making process’ of a political committee,” noting that “the regulation does not impose such universal or near-universal restrictions.” MUR 6959 (In re Democratic National Committee, *et al.*), Factual & Legal Analysis at 4 & n.17 (finding no reason to believe committee violated the foreign national prohibition by hiring an intern who, *inter alia*, performed online research, reviewed social media pages and translated documents). Thus, foreign nationals could permissibly render vendor services to a political committee (including research services and data analytics), as long as all control over the committee’s resources and activities is vested in U.S. citizens.

Now, however, the Commission apparently has formulated a new regulatory position that even the mere provision of services for fair market value—untethered from any actual decision-making authority—by foreign nationals contravenes Section 110.20(i). Irrespective of whether this newfound interpretation is the product of an independent reassessment of the regulation or a concession to current political vicissitudes, it is unmoored from the text of 52 U.S.C. § 30121 and presents serious constitutional deficiencies. *See* Nix Response at pp. 9-11.³

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For the foregoing reasons, Mr. Nix believes that he has more than discharged any burden to rebut the complaints’ allegations, and that the information sought by the Commission’s discovery requests is redundant

³ Even accepting this novel reading of Section 110.20(i) as statutorily sound and constitutionally valid, Mr. Nix himself did not personally participate in the provision of services to Cambridge Analytica clients. As set forth at length in his sworn declaration, Mr. Nix managed the high-level business and marketing facets of Cambridge Analytica, but had little to no personal knowledge of, or involvement in, the day-to-day operations of Cambridge Analytica’s U.S. political clients. *See* Nix Decl. ¶¶ 24-26, 46, 48. The RTB findings to the contrary are premised solely on news accounts relying upon either anonymous sources or a discredited former employee who lacked any personal knowledge of the information he purported to convey.

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of the comprehensive collection of facts and supporting materials that Mr. Nix previously provided in his response to the complaints.

Further, please be advised that, subsequent to the transmission of this letter, this firm will no longer represent Mr. Nix before the Commission in connection with MURs 7350, 7351 or 7382, and hence is not authorized to accept service of correspondence or compulsory process on his behalf.

Thank you for your attention to this matter.

Respectfully,

/s/ Kory Langhofer

Kory Langhofer