



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 5, 2021

SENT VIA CERTIFIED MAIL AND EMAIL
RETURN RECEIPT REQUESTED

Paul S. Ryan
Common Cause
805 15th Street, NW, Suite 800
Washington, DC 20005
pryan@commoncause.org

RE: MUR 7351 (Cambridge Analytica LLC, *et al.*)

Dear Mr. Ryan:

This letter is in reference to the complaint that you filed on behalf of Common Cause with the Federal Election Commission (“Commission”) on March 26, 2018, alleging violations of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations by Cambridge Analytica LLC, *et al.*

On July 24, 2019, the Commission found that there was reason to believe Cambridge Analytica LLC, Christopher Wylie, the John Bolton Super PAC and Cabell Hobbs in his official capacity as treasurer, the Thom Tillis Committee and Collin McMichael in his official capacity as treasurer, and Art Robinson for Congress and Art Robinson in his official capacity as treasurer each violated 52 U.S.C. § 30121, a provision of the Act, and the Commission’s regulation at 11 C.F.R. § 110.20(i). The Commission also found that there was reason to believe Alexander Nix violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) on August 20, 2019. The Commission took no action at the time as to the remaining respondents. The Commission then commenced an investigation. Having concluded the investigation, on September 30, 2021, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016). The Factual and Legal Analyses, which explain the Commission’s reason to believe findings, are enclosed for your information. The Commission is not required to issue a Statement of Reasons in this matter, but if one is issued it will be provided to you.

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The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8). If you have any questions, please contact me at (202) 694-1643 or sghosh@fec.gov.

Sincerely,



Saurav Ghosh

Enclosures:

- Factual and Legal Analysis for Cambridge Analytica LLC
- Factual and Legal Analysis for Christopher Wylie
- Factual and Legal Analysis for John Bolton Super PAC and Cabell Hobbs in his official capacity as treasurer
- Factual and Legal Analysis for Thom Tillis Committee and Collin McMichael in his official capacity as treasurer
- Factual and Legal Analysis for Art Robinson for Congress and Art Robinson in his official capacity as treasurer
- Factual and Legal Analysis for Alexander Nix

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Cambridge Analytica LLC MURs 7350, 7351, and 7382

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission (“Commission”). *See* 52 U.S.C. § 30109(a)(1). These complaints allege that Cambridge Analytica LLC (“Cambridge”) violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and Commission regulations that prohibit foreign nationals from directly or indirectly participating in the decision-making process of a political committee’s contributions or expenditures in connection with a federal election.

These allegations stem from services that Cambridge provided to four political committees during the 2014 election cycle — the Thom Tillis Committee and Collin McMichael in his official capacity as treasurer (“Tillis Committee”); the John Bolton Super PAC and Cabell Hobbs in his official capacity as treasurer (“Bolton PAC”); the North Carolina Republican Party and Jason Lemons in his official capacity as treasurer (“NCRP”); and Art Robinson for Congress and Art Robinson in his official capacity as treasurer (“Robinson Committee”).¹

For the reasons explained fully below, the Commission finds reason to believe that Cambridge violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

¹ *See* MUR 7351 Compl. (Mar. 26, 2018); MUR 7382 Compl. (May 10, 2018).

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Background**

3 Cambridge is a limited liability company organized in Delaware on December 31, 2013.²
4 SCL Group LTD (“SCL”) is based in England and registered in the United Kingdom on July 20,
5 2005.³ Cambridge reportedly began working for political committees in the U.S. during the
6 2014 election cycle.⁴ The Complaints allege, based on news reports, that Cambridge was
7 “effectively a shell” and “any contracts won by Cambridge . . . would be serviced by London-
8 based SCL and overseen by [Alexander] Nix, a British citizen,” who is a director of SCL and
9 chief executive of Cambridge.⁵ “Most SCL employees and contractors” were reportedly foreign
10 nationals from Canada or Europe.⁶

² Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

³ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁴ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁵ See MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

⁶ NYT March 17 Article.

1 According to former employees quoted in media reports, during the 2014 election cycle,
2 Cambridge, like SCL, was “overwhelmingly staffed by non-U.S. citizens,”⁷ at least two of whom
3 “were still answering ultimately to [Alexander] Nix” while working for U.S. political
4 committees.⁸ Christopher Wylie, who worked for Cambridge during the 2014 election cycle and
5 is a foreign national, reportedly asserts that he and “many foreign nationals worked on the
6 campaigns, and many were embedded in the campaigns around the U.S.”⁹ Wylie also asserts
7 that he was personally part of “multiple conference calls in 2014” with Nix and Stephen K.
8 Bannon, a Cambridge board member, in which “strategic campaign matters were discussed.”¹⁰
9 According to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company
10 was violating federal law by using foreign nationals to work on American political campaigns.¹¹
11 However, Cambridge reportedly provided no compliance training for its foreign employees on

⁷ Timberg Article.

⁸ MUR 7350 Compl. at ¶ 23 (citing Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political> (“Guardian Article”)).

⁹ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schecter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schecter Article”)). Wylie apparently played a significant role in founding Cambridge. See NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schecter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”). The circumstances of Wylie’s departure are also controverted: Wylie claims that he resigned because of his growing unease with Cambridge, while Cambridge contends that Wylie departed to start a competing company and became disgruntled when Cambridge sued him to enforce its intellectual property rights. See Timberg Article at 4.

¹⁰ MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schecter Article).

¹¹ Timberg Article.

1 what conduct to avoid in order to comply with federal law while working for U.S. political
2 committees.¹²

3 The primary service that Cambridge offered its clients was a form of voter targeting that
4 it described as “psychological profiling to reach voters with individually tailored messages.”¹³
5 Cambridge allegedly employed many foreign national data scientists, including Dr. Alexander
6 Tayler, who led the data science team as the company’s Chief Data Officer.¹⁴ Cambridge
7 reportedly helped political committees “decide what voters to target with political messages and
8 what messages to deliver to them,” while also offering additional services such as “fundraising,
9 planning events, and providing communications strategy[.]”¹⁵ Wylie asserts that he and other
10 foreign nationals working for Cambridge “weren’t just working on messaging” but “were
11 instructing campaigns on which messages go where and to who.”¹⁶ Other employees have
12 supported this assertion, claiming that Cambridge “didn’t handle only data” but worked on
13 message development and targeting strategy.¹⁷

14 During the 2014 election cycle, Cambridge worked for several political committees,
15 including the Bolton PAC, an independent-expenditure-only political committee (“IEOPC”); the

¹² Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

¹³ Timberg Article; *see also* Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), available at <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

¹⁴ MUR 7350 Compl. at ¶ 22; MUR 7351 Compl. at ¶ 9.

¹⁵ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

¹⁶ *Id.* at ¶ 26 (quoting Schechter Article).

¹⁷ Timberg Article.

1 Tillis Committee, Thom Tillis’s authorized campaign committee for the U.S. Senate in North
2 Carolina; the NCRP, a state party committee supporting Tillis’s campaign; and the Robinson
3 Committee, Arthur Robinson’s authorized campaign committee in Oregon’s 4th Congressional
4 District.¹⁸

5 The Bolton PAC reportedly hired Cambridge to perform a variety of tasks, from data
6 modeling to designing “concepts for advertisements for candidates supported by Mr. Bolton’s
7 PAC, including the 2014 campaign of Thom Tillis[.]”¹⁹ According to Cambridge internal
8 documents that Wylie publicized, the Bolton PAC used Cambridge to “provide messaging and
9 communications support” and “made use of significant input from SCL on messaging and target
10 audiences.”²⁰ The Bolton PAC’s “media teams took direction well and worked with Harris
11 MacLeod (SCL) to ensure each message was tailored in a way that would resonate with its
12 target.”²¹ Cambridge also provided “[d]irection and feedback on all creative [content]” and the
13 Bolton PAC’s “creative teams were given further guidance based on which messages resonated
14 most with target groups.”²² Cambridge also reportedly drafted talking points for Ambassador

¹⁸ MUR 7351 Compl. at ¶ 13.

¹⁹ MUR 7351 Compl. at ¶ 33 (quoting Matthew Rosenberg, *Bolton Was Early Beneficiary of Cambridge Analytica’s Facebook Data*, N.Y. TIMES (Mar. 23, 2018), available at <https://www.nytimes.com/2018/03/23/us/politics/bolton-cambridge-analyticas-facebook-data.html> (“NYT March 23 Article”).

²⁰ Cambridge Analytica 2014 Activity Summary Report at 16, available at <https://www.washingtonpost.com/apps/g/page/politics/2014-cambridge-analytica-report-on-congressional-and-legislative-races/2294/> (“2014 Report”); see also Timberg Article (discussing and linking to 2014 Report, among other Cambridge documents).

²¹ 2014 Report at 16-17. MacLeod is allegedly a Canadian foreign national. See Issenberg Article at 2 (“Harris MacLeod [is] a Nova Scotian who worked as a political journalist in Ottawa [and] spent much of 2014 working for Cambridge Analytica’s marquee American clients. Harris worked for John Bolton’s super-PAC[.]”).

²² 2014 Report at 17; see also Issenberg Article at 8 (“[Cambridge Analytica] advised Bolton’s team on the design of six ads, thirty seconds each, with wildly different creative approaches. One ad, targeted at voters modeled to be conscientious and agreeable, was set to upbeat music and showed Bolton standing outdoors on a bright day, matter-of-factly addressing the need to ‘leave a stronger, safer America for our children.’”).

1 John Bolton to use to describe the services Cambridge was providing to his eponymous political
2 committee.²³

3 For Tillis's 2014 U.S. Senate race in North Carolina, Wylie reportedly claims that "his
4 largely foreign team" crafted and targeted messaging for Tillis's campaign.²⁴ Cambridge's
5 documents detail that the company was also contracted by the NCRP to provide support for
6 Tillis, other Republican campaigns in North Carolina, and the NCRP.²⁵ The documents confirm
7 that Cambridge provided the NCRP and Tillis Committee with message targeting services,
8 noting that "local campaign staff had ideas about how they wanted their target universes defined,
9 but the [Cambridge] team was able to use their knowledge of the data to suggest more effective
10 targeting strategies."²⁶ Cambridge's modeling and targeting work for the NCRP and Tillis
11 Committee reportedly altered the content of those committees' messages to focus on issues that
12 Cambridge had identified as resonating with potential voters, such as foreign terrorism, more
13 than issues previously prioritized by the committees, like state-wide education policy.²⁷

14 For the Robinson Committee, Cambridge states that it took on a "comprehensive set of
15 responsibilities and effectively managed the campaign in its entirety, with strategic advice

²³ MUR 7351 Compl. at ¶ 33 (quoting NYT March 23 Article).

²⁴ Schechter Article.

²⁵ 2014 Report at 12.

²⁶ *Id.* at 14.

²⁷ See Issenberg Article ("In North Carolina, where the company was paid \$150,000 by the state party and \$30,000 by Tillis's campaign, Cambridge Analytica developed models to predict individual support, turnout likelihoods, and issues of concern that would recalibrate continuously based on interactions with voters[, and] that dynamic process allowed Tillis's campaign to identify a sizable cluster of North Carolinians who prioritized foreign affairs — which encouraged Tillis to shift the conversation from state-level debates over education policy to charges that incumbent Kay Hagan had failed to take ISIS's rise seriously."); 2014 Report at 13 (discussing changing committee messaging to more "salient" issues such as national security); *see also* 2014 Report at 16, 19 (discussing Bolton PAC's desire to focus on national security and detailing successes based on national security-focused messaging).

1 channeled through US nationals on the [Cambridge-SCL] team.”²⁸ Cambridge’s 2014 internal
2 assessment report noted that although the Robinson Committee hired Cambridge to provide
3 “supportive intervention to augment an existing campaign infrastructure[,] . . . on the ground, it
4 became clear that no such professional ‘campaign team’ existed[.]”²⁹ As such, Cambridge
5 supplied a wide range of deliverables, such as “communications strategy, including key topics
6 and slogans[,] talking points, speeches, planning for events and candidate travels[,]” and
7 management of a range of campaign functions from canvassing to social media engagement.³⁰

8 **B. Legal Analysis**

9 1. Foreign Nationals May Not Directly or Indirectly Make Contributions, 10 Donations, Expenditures, or Disbursements

11 The Act and Commission regulations prohibit any “foreign national” from directly or
12 indirectly making a contribution or donation of money or other thing of value, or an expenditure,
13 independent expenditure, or disbursement, in connection with a federal, state, or local election.³¹
14 The Act’s definition of “foreign national” includes an individual who is not a citizen or national
15 of the United States and who is not lawfully admitted for permanent residence, as well as a
16 “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership,
17 association, corporation, organization, or other combination of persons organized under the laws

²⁸ 2014 Report at 1; *see* MUR 7351 Compl. at ¶ 31 (quoting Timberg Article).

²⁹ 2014 Report at 2.

³⁰ *Id.* at 4.

³¹ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

1 of or having its principal place of business in a foreign country.”³² Commission regulations
2 implementing the Act’s foreign national prohibition provide:

3 A foreign national shall not direct, dictate, control, or directly or indirectly
4 participate in the decision-making process of any person, such as a corporation,
5 labor organization, political committee, or political organization with regard to
6 such person’s Federal or non-Federal election-related activities, such as decisions
7 concerning the making of contributions, donations, expenditures, or
8 disbursements . . . or decisions concerning the administration of a political
9 committee.³³

10
11 The Commission has explained that this provision also bars foreign nationals from “involvement
12 in the management of a political committee.”³⁴

13 In light of these provisions, Commission regulations permit any person or company —
14 foreign or domestic — to provide goods or services to a political committee, without making a
15 contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary
16 course of business, and at the usual and normal charge, as long as foreign nationals do not
17 directly or indirectly participate in any committee’s management or decision-making process in
18 connection with its election-related activities.³⁵ For example, in MUR 5998, the Commission

³² 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

³³ 11 C.F.R. § 110.20(i).

³⁴ Contribution Limits and Prohibitions, 67 Fed. Reg. 69,928, 69,946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees”).

³⁵ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute a contribution under the Act. However, 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 or hiring a foreign national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution.

1 found that the foreign national owners of a venue did not make or facilitate a contribution to a
2 political committee by allowing the committee to rent the venue for a fundraising event.³⁶ The
3 venue at issue was rented out for events in the ordinary course of business, and the owners
4 charged the committee the usual and normal amount for the service.³⁷ The Commission noted
5 that there was no available information to suggest — and the foreign nationals and political
6 committee expressly denied — that the foreign nationals had any “decision-making role in the
7 event.”³⁸

8 The Commission has found that not all participation by foreign nationals in the election-
9 related activities of others will violate the Act. In MUR 6959, for example, the Commission
10 found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing
11 clerical duties, such as online research and translations, during a one month-long internship with
12 a party committee.³⁹ Similarly, in MURs 5987, 5995, and 6015, the Commission found no
13 reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services
14 to perform at a campaign fundraiser and agreeing to let the political committee use his name and
15 likeness in its emails promoting the concert and soliciting support, where the record did not
16 indicate that the foreign national had been involved in the committee’s decision-making process

³⁶ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

³⁷ *Id.*

³⁸ *Id.* at 5.

³⁹ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not indicate that the foreign national participated in any political committee’s decision-making process). The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

1 in connection with the making of contributions, donations, expenditures, or disbursements.⁴⁰ By
 2 contrast, the Commission has consistently found a violation of the foreign national prohibition
 3 where foreign national officers or directors of a U.S. company participated in the company's
 4 decisions to make contributions or in the management of its separate segregated fund.⁴¹

5 2. There is Reason to Believe that Cambridge Violated 52 U.S.C. § 30121
 6 and 11 C.F.R. § 110.20(i) When its Foreign National Employees Directly
 7 or Indirectly Participated in a Decision-Making Process Regarding the
 8 Election-Related Activities of Several Political Committees During the
 9 2014 Election Cycle

10 Cambridge's usual and normal business involved providing data analytics and message
 11 targeting services, and there is no specific information suggesting that Cambridge charged any
 12 committee less than its usual and normal rate for such services. Even if Cambridge, which was
 13 organized under the laws of Delaware and therefore appears to be a domestic company, was,
 14 *arguendo*, a foreign company, it could provide services to a political committee as a commercial
 15 vendor without thereby making a contribution to that committee, but foreign nationals may not
 16 directly or indirectly participate in any committee's management or decision-making process in
 17 connection with its election-related spending.

18 Wylie, a Cambridge foreign national employee, appears to have participated in the
 19 decision-making processes of Cambridge's clients with respect to their election-related activities.

⁴⁰ Factual and Legal Analysis at 6-9, MURs 5987, 5995, and 6015 (Sir Elton John); *see also* Factual and Legal Analysis at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller).

⁴¹ *See, e.g.*, Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company's board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company's election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc. ("APIC")) (U.S. corporation owned by foreign company violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

1 Wylie reportedly admits that he “worked on all of the company’s U.S. political campaigns in
2 2014,”⁴² and that he was personally part of “multiple conference calls in 2014” with Nix and
3 Stephen K. Bannon, a Cambridge board member, in which “strategic campaign matters were
4 discussed.”⁴³ During this period of time, Cambridge not only provided political committees with
5 communications and targeting advice, *i.e.*, advice about how to effectively craft tailored
6 communications and target them to receptive voters in order to maximize the messages’ impact,
7 but “directed” the committees in their messaging.⁴⁴

8 According to Wylie and internal Cambridge documents, he and other foreign nationals
9 were embedded in political committees and were “instructing campaigns on which messages go
10 where and to who.”⁴⁵ By providing strategic advice to committees on both the content and target
11 audience for their campaign communications, these foreign nationals may have helped shape
12 political committees’ election-related spending decisions.

13 The available information supports a finding that Cambridge, through its foreign national
14 employees, may have participated in the decision-making processes with regard to election-
15 related activities of the Robinson Committee. In contrast to the circumstances presented in
16 Advisory Opinion 2004-26, it appears that foreign nationals were “managing or participating in
17 the decisions” of the Robinson Committee, because Cambridge, which employed mostly
18 foreigners in 2014, assumed “comprehensive” responsibilities for the Robinson Committee
19 during the 2014 election cycle, including managing basic campaign functions and providing

⁴² Schechter Article.

⁴³ Timberg Article.

⁴⁴ *See, e.g.*, 2014 Report at 16-17 (describing Cambridge’s successful “direction” of the Bolton PAC).

⁴⁵ Schechter Article.

1 strategic advice.⁴⁶ Robinson acknowledges that Cambridge, through its foreign national
2 employees, was at least indirectly participating in a decision-making process in connection with
3 the committee’s election-related spending.⁴⁷ Even if, as Robinson contends, the Robinson
4 Committee’s staff made all final decisions regarding the committee’s management and electoral
5 strategy, the record indicates that Wylie and other Cambridge foreign national employees
6 participated, either directly or indirectly, in the Robinson Committee’s management or decision-
7 making process in connection with its expenditures.

8 The available information also supports a finding that Cambridge, through its foreign
9 national employees, may have participated, directly or indirectly, in the management or decision-
10 making processes in connection with election-related spending of the Tillis Committee, Bolton
11 PAC, and NCRP. Cambridge reportedly provided “polling, focus groups and message
12 development” services for these committees during Thom Tillis’s 2014 campaign for the U.S.
13 Senate in North Carolina.⁴⁸ Wylie reportedly claims to have worked on all of Cambridge’s
14 political campaigns in 2014, including Thom Tillis’s campaign.⁴⁹ Wylie reportedly admits that
15 “his largely foreign team” of Cambridge employees instructed the Tillis campaign on its
16 messaging by crafting and targeting the messaging, and that “his” team instructed campaigns on
17 “which messages go where and to who.”⁵⁰

⁴⁶ Advisory Op. 2004-26 at 3; 2014 Report at 1.

⁴⁷ See Arthur Robinson Resp. at 1-2.

⁴⁸ NYT March 17 Article.

⁴⁹ Schechter Article.

⁵⁰ *Id.*

1 Wylie reportedly claims that “three or four full-time [Cambridge] staffers embedded in
2 Tillis’s campaign on the ground in Raleigh [and all] of them were foreign nationals.”⁵¹ Another
3 former Cambridge employee also claims that most of the Tillis campaign’s messaging team was
4 composed of foreign nationals.⁵² These assertions indicate that Wylie may have worked not only
5 with the Tillis Committee, but also the NCRP and Bolton PAC in support of Tillis’s campaign
6 for the U.S. Senate. Wylie and other Cambridge employees may also have been embedded with
7 the NCRP to provide targeting advice used to create and distribute communications supporting
8 Tillis’s campaign.⁵³ Wylie and another former Cambridge employee also contend that
9 Cambridge helped develop data models and message concepts for the Bolton PAC’s
10 communications supporting Tillis during the 2014 election.⁵⁴

11 The key issue is not whether Wylie or any other foreign national had final decision-
12 making authority or final say regarding any analysis, but whether they participated, directly or
13 indirectly, in a Cambridge client’s management or decision-making process in connection with
14 its “election-related activities, such as decisions concerning the making of contributions,
15 donations, expenditures, or disbursements . . . or decisions concerning the administration of a
16 political committee.”⁵⁵ Here, the available information supports the conclusion that Wylie and

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* Both the Tillis Committee and NCRP rejected Wylie’s claim that Cambridge employees were embedded with Tillis’s authorized committee, asserting instead that Cambridge employees were embedded with the NCRP. *Id.*; see Timberg Article (“Cambridge Analytica documents show it advised a congressional candidate in Oregon, state legislative candidates in Colorado and, on behalf of the North Carolina Republican Party, the winning campaign for Sen. Thom Tillis.”).

⁵⁴ NYT March 23 Article.

⁵⁵ 11 C.F.R. § 110.20(i).

MURs 7350, 7351, and 7382 (Cambridge Analytica LLC)

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1 other foreign national Cambridge employees may have done both by participating in committees'
2 decision-making in connection with their communications strategy and expenditures.

3 Based on the available information regarding Cambridge's conduct, through which
4 foreign nationals participated in Cambridge client committees' management or decision-making
5 processes in connection with their election-related spending, the Commission finds reason to
6 believe that Cambridge violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Christopher Wylie

MURs 7350 and 7351

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission (“Commission”). *See* 52 U.S.C. § 30109(a)(1). These complaints allege that Christopher Wylie, a foreign national employee of Cambridge Analytica LLC (“Cambridge”), violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and Commission regulations that prohibit foreign nationals from directly or indirectly participating in the decision-making process of a political committee’s contributions or expenditures in connection with a federal election.

These allegations stem from services that Cambridge provided to four political committees during the 2014 election cycle: the Thom Tillis Committee and Collin McMichael in his official capacity as treasurer (“Tillis Committee”); the John Bolton Super PAC and Cabell Hobbs in his official capacity as treasurer (“Bolton PAC”); the North Carolina Republican Party and Jason Lemons in his official capacity as treasurer (“NCRP”); and Art Robinson for Congress and Art Robinson in his official capacity as treasurer (the “Robinson Committee”).¹

For the reasons explained fully below, the Commission finds reason to believe that Wylie violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

¹ *See* MUR 7350 Compl. (Mar. 26, 2018); MUR 7351 Compl. (Mar. 26, 2018).

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Background**

3 Cambridge is a limited liability company organized in Delaware on December 31, 2013.²
4 SCL Group LTD (“SCL”) is based in England and registered in the United Kingdom on July 20,
5 2005.³ Cambridge reportedly began working for political committees in the U.S. during the
6 2014 election cycle.⁴ The Complaints allege, based on news reports, that Cambridge was
7 “effectively a shell” and “any contracts won by Cambridge . . . would be serviced by London-
8 based SCL and overseen by [Alexander] Nix, a British citizen,” who is a director of SCL and
9 chief executive of Cambridge.⁵ “Most SCL employees and contractors” were reportedly foreign
10 nationals from Canada or Europe.⁶

² Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

³ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁴ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁵ See MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

⁶ NYT March 17 Article.

1 According to former employees quoted in media reports, during the 2014 election cycle,
2 Cambridge, like SCL, was “overwhelmingly staffed by non-U.S. citizens,”⁷ at least two of whom
3 “were still answering ultimately to [Alexander] Nix” while working for U.S. political
4 committees.⁸ Wylie, who worked for Cambridge during the 2014 election cycle and is a foreign
5 national, reportedly asserts that he and “many foreign nationals worked on the campaigns, and
6 many were embedded in the campaigns around the U.S.”⁹ Wylie also asserts that he was
7 personally part of “multiple conference calls in 2014” with Nix and Stephen K. Bannon, a
8 Cambridge board member, in which “strategic campaign matters were discussed.”¹⁰ According
9 to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company was
10 violating federal law by using foreign nationals to work on American political campaigns.¹¹
11 However, Cambridge reportedly provided no compliance training for its foreign employees on

⁷ Timberg Article.

⁸ MUR 7350 Compl. at ¶ 23 (citing Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political> (“Guardian Article”)).

⁹ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schechter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schechter Article”)). Wylie apparently played a significant role in founding Cambridge. See NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schechter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”). The circumstances of Wylie’s departure are also controverted: Wylie claims that he resigned because of his growing unease with Cambridge, while Cambridge contends that Wylie departed to start a competing company and became disgruntled when Cambridge sued him to enforce its intellectual property rights. See Timberg Article at 4.

¹⁰ MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schechter Article).

¹¹ Timberg Article.

1 what conduct to avoid in order to comply with federal law while working for U.S. political
2 committees.¹²

3 The primary service that Cambridge offered its clients was a form of voter targeting that
4 it described as “psychological profiling to reach voters with individually tailored messages.”¹³
5 Cambridge allegedly employed many foreign national data scientists, including Dr. Alexander
6 Tayler, who led the data science team as the company’s Chief Data Officer.¹⁴ Cambridge
7 reportedly helped political committees “decide what voters to target with political messages and
8 what messages to deliver to them,” while also offering additional services such as “fundraising,
9 planning events, and providing communications strategy[.]”¹⁵ Wylie asserts that he and other
10 foreign nationals working for Cambridge “weren’t just working on messaging” but “were
11 instructing campaigns on which messages go where and to who.”¹⁶ Other employees have
12 supported this assertion, claiming that Cambridge “didn’t handle only data” but worked on
13 message development and targeting strategy.¹⁷

14 During the 2014 election cycle, Cambridge worked for several political committees,

¹² Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

¹³ Timberg Article; *see also* Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), *available at* <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

¹⁴ MUR 7350 Compl. at ¶ 22; MUR 7351 Compl. at ¶ 9.

¹⁵ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

¹⁶ *Id.* at ¶ 26 (quoting Schechter Article).

¹⁷ Timberg Article.

1 including the Bolton PAC, an independent-expenditure-only political committee (“IEOPC”); the
2 Tillis Committee, Thom Tillis’s authorized campaign committee for the U.S. Senate in North
3 Carolina; the NCRP, a state party committee supporting Tillis’s campaign; and the Robinson
4 Committee, Arthur Robinson’s authorized campaign committee in Oregon’s 4th Congressional
5 District.¹⁸

6 The Bolton PAC reportedly hired Cambridge to perform a variety of tasks, from data
7 modeling to designing “concepts for advertisements for candidates supported by Mr. Bolton’s
8 PAC, including the 2014 campaign of Thom Tillis[.]”¹⁹ According to Cambridge internal
9 documents that Wylie publicized, the Bolton PAC used Cambridge to “provide messaging and
10 communications support” and “made use of significant input from SCL on messaging and target
11 audiences.”²⁰ The Bolton PAC’s “media teams took direction well and worked with Harris
12 MacLeod (SCL) to ensure each message was tailored in a way that would resonate with its
13 target.”²¹ Cambridge also provided “[d]irection and feedback on all creative [content]” and the
14 Bolton PAC’s “creative teams were given further guidance based on which messages resonated
15 most with target groups.”²² Cambridge also reportedly drafted talking points for Ambassador

¹⁸ MUR 7351 Compl. at ¶ 13.

¹⁹ *Id.* at ¶ 33 (quoting Matthew Rosenberg, *Bolton Was Early Beneficiary of Cambridge Analytica’s Facebook Data*, N.Y. TIMES (Mar. 23, 2018), available at <https://www.nytimes.com/2018/03/23/us/politics/bolton-cambridge-analyticas-facebook-data.html> (“NYT March 23 Article”).

²⁰ Cambridge Analytica 2014 Activity Summary Report at 16, available at <https://www.washingtonpost.com/apps/g/page/politics/2014-cambridge-analytica-report-on-congressional-and-legislative-races/2294/> (“2014 Report”); see also Timberg Article (discussing and linking to 2014 Report, among other Cambridge documents).

²¹ 2014 Report at 16-17. MacLeod is allegedly a Canadian foreign national. See Issenberg Article at 2 (“Harris MacLeod [is] a Nova Scotian who worked as a political journalist in Ottawa [and] spent much of 2014 working for Cambridge Analytica’s marquee American clients. Harris worked for John Bolton’s super-PAC[.]”).

²² 2014 Report at 17; see also Issenberg Article at 8 (“[Cambridge Analytica] advised Bolton’s team on the design of six ads, thirty seconds each, with wildly different creative approaches. One ad, targeted at voters modeled

1 John Bolton to use to describe the services Cambridge was providing to his eponymous political
2 committee.²³

3 For Tillis’s 2014 U.S. Senate race in North Carolina, Wylie reportedly claims that “his
4 largely foreign team” crafted and targeted messaging for Tillis’s campaign.²⁴ Cambridge’s
5 documents detail that the company was also contracted by the NCRP to provide support for
6 Tillis, other Republican campaigns in North Carolina, and the NCRP.²⁵ The documents confirm
7 that Cambridge provided the NCRP and Tillis Committee with message targeting services,
8 noting that “local campaign staff had ideas about how they wanted their target universes defined,
9 but the [Cambridge] team was able to use their knowledge of the data to suggest more effective
10 targeting strategies.”²⁶ Cambridge’s modeling and targeting work for the NCRP and Tillis
11 Committee reportedly altered the content of those committees’ messages to focus on issues that
12 Cambridge had identified as resonating with potential voters, such as foreign terrorism, more
13 than issues previously prioritized by the committees, like state-wide education policy.²⁷

14 For the Robinson Committee, Cambridge states that it took on a “comprehensive set of

to be conscientious and agreeable, was set to upbeat music and showed Bolton standing outdoors on a bright day, matter-of-factly addressing the need to ‘leave a stronger, safer America for our children.’”).

²³ MUR 7351 Compl. at ¶ 33 (quoting NYT March 23 Article).

²⁴ Schechter Article.

²⁵ 2014 Report at 12.

²⁶ *Id.* at 14.

²⁷ See Issenberg Article (“In North Carolina, where the company was paid \$150,000 by the state party and \$30,000 by Tillis’s campaign, Cambridge Analytica developed models to predict individual support, turnout likelihoods, and issues of concern that would recalibrate continuously based on interactions with voters[, and] that dynamic process allowed Tillis’s campaign to identify a sizable cluster of North Carolinians who prioritized foreign affairs — which encouraged Tillis to shift the conversation from state-level debates over education policy to charges that incumbent Kay Hagan had failed to take ISIS’s rise seriously.”); 2014 Report at 13 (discussing changing committee messaging to more “salient” issues such as national security); see also *id.* at 16, 19 (discussing Bolton PAC’s desire to focus on national security and detailing successes based on national security-focused messaging).

1 responsibilities and effectively managed the campaign in its entirety, with strategic advice
2 channeled through US nationals on the [Cambridge-SCL] team.”²⁸ Cambridge’s 2014 internal
3 assessment report noted that although the Robinson Committee hired Cambridge to provide
4 “supportive intervention to augment an existing campaign infrastructure[,] . . . on the ground, it
5 became clear that no such professional ‘campaign team’ existed[.]”²⁹ As such, Cambridge
6 supplied a wide range of deliverables, such as “communications strategy, including key topics
7 and slogans[,] talking points, speeches, planning for events and candidate travels[,]” and
8 management of a range of campaign functions from canvassing to social media engagement.³⁰

9 **B. Legal Analysis**

10 1. Foreign Nationals May Not Directly or Indirectly Make Contributions, 11 Donations, Expenditures, or Disbursements

12 The Act and Commission regulations prohibit any “foreign national” from directly or
13 indirectly making a contribution or donation of money or other thing of value, or an expenditure,
14 independent expenditure, or disbursement, in connection with a federal, state, or local election.³¹
15 The Act’s definition of “foreign national” includes an individual who is not a citizen or national
16 of the United States and who is not lawfully admitted for permanent residence, as well as a
17 “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership,

²⁸ 2014 Report at 1; *see* MUR 7351 Compl. at ¶ 31 (quoting Timberg Article).

²⁹ 2014 Report at 2.

³⁰ *Id.* at 4.

³¹ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

1 association, corporation, organization, or other combination of persons organized under the laws
 2 of or having its principal place of business in a foreign country.”³² Commission regulations
 3 implementing the Act’s foreign national prohibition provide:

4 A foreign national shall not direct, dictate, control, or directly or indirectly
 5 participate in the decision-making process of any person, such as a corporation,
 6 labor organization, political committee, or political organization with regard to
 7 such person’s Federal or non-Federal election-related activities, such as decisions
 8 concerning the making of contributions, donations, expenditures, or
 9 disbursements . . . or decisions concerning the administration of a political
 10 committee.³³

11
 12 The Commission has explained that this provision also bars foreign nationals from “involvement
 13 in the management of a political committee.”³⁴

14 In light of these provisions, Commission regulations permit any person or company —
 15 foreign or domestic — to provide goods or services to a political committee, without making a
 16 contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary
 17 course of business, and at the usual and normal charge, as long as foreign nationals do not
 18 directly or indirectly participate in any committee’s management or decision-making process in
 19 connection with its election-related activities.³⁵ For example, in MUR 5998, the Commission

³² 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

³³ 11 C.F.R. § 110.20(i).

³⁴ Contribution Limits and Prohibitions, 67 Fed. Reg. 69,928, 69,946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees”).

³⁵ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute a contribution under the Act. However, soliciting, accepting, or receiving information in connection with an election

1 found that the foreign national owners of a venue did not make or facilitate a contribution to a
2 political committee by allowing the committee to rent the venue for a fundraising event.³⁶ The
3 venue at issue was rented out for events in the ordinary course of business, and the owners
4 charged the committee the usual and normal amount for the service.³⁷ The Commission noted
5 that there was no available information to suggest — and the foreign nationals and political
6 committee expressly denied — that the foreign nationals had any “decision-making role in the
7 event.”³⁸

8 The Commission has found that not all participation by foreign nationals in the election-
9 related activities of others will violate the Act. In MUR 6959, for example, the Commission
10 found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing
11 clerical duties, such as online research and translations, during a one month-long internship with
12 a party committee.³⁹ Similarly, in MURs 5987, 5995, and 6015, the Commission found no
13 reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services
14 to perform at a campaign fundraiser and agreeing to let the political committee use his name and
15 likeness in its emails promoting the concert and soliciting support, where the record did not

from a foreign national, as opposed to purchasing the information at the usual and normal charge or hiring a foreign national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution.

³⁶ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

³⁷ *Id.*

³⁸ *Id.* at 5.

³⁹ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not indicate that the foreign national participated in any political committee’s decision-making process). The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

1 indicate that the foreign national had been involved in the committee's decision-making process
2 in connection with the making of contributions, donations, expenditures, or disbursements.⁴⁰ By
3 contrast, the Commission has consistently found a violation of the foreign national prohibition
4 where foreign national officers or directors of a U.S. company participated in the company's
5 decisions to make contributions or in the management of its separate segregated fund.⁴¹

6 2. There is Reason to Believe that Wylie Violated 52 U.S.C. § 30121 and
7 11 C.F.R. § 110.20(i) When He Participated in the Decision-Making
8 Process Regarding Election-Related Activities of Several Political
9 Committees During the 2014 Election Cycle

10 Cambridge's usual and normal business involved providing data analytics and message
11 targeting services, and there is no specific information suggesting that Cambridge charged any
12 committee less than its usual and normal rate for such services. Even if Cambridge, which was
13 organized under the laws of Delaware and therefore appears to be a domestic company, was,
14 *arguendo*, a foreign company, it could provide services to a political committee as a commercial
15 vendor without thereby making a contribution to that committee, but foreign nationals may not
16 directly or indirectly participate in any committee's management or decision-making process in
17 connection with its election-related spending.

18 Wylie, a Cambridge foreign national employee, appears to have participated in the

⁴⁰ Factual and Legal Analysis at 6-9, MURs 5987, 5995, and 6015 (Sir Elton John); *see also* Factual and Legal Analysis at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller).

⁴¹ *See, e.g.*, Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company's board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company's election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc. ("APIC")) (U.S. corporation owned by foreign company violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

1 decision-making processes of Cambridge’s clients with respect to their election-related activities.
2 Wylie reportedly admits that he “worked on all of the company’s U.S. political campaigns in
3 2014,”⁴² and that he was personally part of “multiple conference calls in 2014” with Nix and
4 Stephen K. Bannon, a Cambridge board member, in which “strategic campaign matters were
5 discussed.”⁴³ During this period of time, Cambridge not only provided political committees with
6 communications and targeting advice, *i.e.*, advice about how to effectively craft tailored
7 communications and target them to receptive voters in order to maximize the messages’ impact,
8 but “directed” the committees in their messaging.⁴⁴

9 According to Wylie and internal Cambridge documents, he and other foreign nationals
10 were embedded in political committees and were “instructing campaigns on which messages go
11 where and to who.”⁴⁵ By providing strategic advice to committees on both the content and target
12 audience for their campaign communications, Wylie may have helped shape political
13 committees’ election-related spending decisions.

14 The available information supports a finding that Wylie may have participated in the
15 decision-making processes with regard to election-related activities of the Robinson Committee.
16 In contrast to the circumstances presented in Advisory Opinion 2004-26, it appears that foreign
17 nationals were “managing or participating in the decisions” of the Robinson Committee, because
18 Cambridge, which employed mostly foreigners in 2014, assumed “comprehensive”
19 responsibilities for the Robinson Committee during the 2014 election cycle, including managing

⁴² Schechter Article.

⁴³ Timberg Article.

⁴⁴ *See, e.g.*, 2014 Report at 16-17 (describing Cambridge’s successful “direction” of the Bolton PAC).

⁴⁵ Schechter Article.

1 basic campaign functions and providing strategic advice.⁴⁶ Even if the Robinson Committee’s
2 staff made all final decisions regarding the committee’s management and electoral strategy, the
3 record indicates that Wylie participated, either directly or indirectly, in the Committee’s
4 management or decision-making process in connection with the its expenditures.

5 The available information also supports a finding that Wylie may have participated in the
6 decision-making processes in connection with election-related spending of the Tillis Committee,
7 Bolton PAC, and NCRP. Cambridge reportedly provided “polling, focus groups and message
8 development” services for these committees during Thom Tillis’s 2014 campaign for the U.S.
9 Senate in North Carolina.⁴⁷ Wylie reportedly claims to have worked on all of Cambridge’s
10 political campaigns in 2014, including Thom Tillis’s campaign.⁴⁸ Wylie reportedly admits that
11 “his largely foreign team” instructed the Tillis campaign on its messaging by crafting and
12 targeting the messaging, and that “his” team instructed campaigns on “which messages go where
13 and to who.”⁴⁹

14 Wylie reportedly claims that “three or four full-time [Cambridge] staffers embedded in
15 Tillis’s campaign on the ground in Raleigh [and all] of them were foreign nationals.”⁵⁰ Another
16 former Cambridge employee also claims that most of the Tillis campaign’s messaging team was
17 composed of foreign nationals.⁵¹ These assertions indicate that Wylie may have worked with not

⁴⁶ Advisory Op. 2004-26 at 3; 2014 Report at 1.

⁴⁷ NYT March 17 Article.

⁴⁸ Schechter Article.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

1 only the Tillis Committee, but also the NCRP and Bolton PAC in support of Tillis’s campaign
2 for the U.S. Senate. Wylie and other Cambridge employees may also have been embedded with
3 the NCRP to provide targeting advice used to create and distribute communications supporting
4 Tillis’s campaign.⁵² Wylie and another former Cambridge employee also contend that
5 Cambridge helped develop data models and message concepts for the Bolton PAC’s
6 communications supporting Tillis during the 2014 election.⁵³

7 The key issue is not whether Wylie had final decision-making authority or final say
8 regarding any analysis, but whether he participated, directly or indirectly, in a Cambridge client’s
9 management or decision-making process in connection with its “election-related activities, such
10 as decisions concerning the making of contributions, donations, expenditures, or
11 disbursements . . . or decisions concerning the administration of a political committee.”⁵⁴ Here,
12 the available information supports the conclusion that Wylie may have done both by
13 participating in the committees’ decision-making regarding their communications strategy and
14 expenditures.

15 Based on all of the available information regarding Cambridge’s conduct, and Wylie’s
16 personal involvement in that conduct while working for Cambridge, the Commission finds
17 reason to believe that Wylie violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

⁵² *Id.* Both the Tillis Committee and NCRP rejected Wylie’s claim that Cambridge employees were embedded with Tillis’s authorized committee, asserting instead that Cambridge employees were embedded with the NCRP. *Id.*; see Timberg Article (“Cambridge Analytica documents show it advised a congressional candidate in Oregon, state legislative candidates in Colorado and, on behalf of the North Carolina Republican Party, the winning campaign for Sen. Thom Tillis.”).

⁵³ NYT March 23 Article.

⁵⁴ 11 C.F.R. § 110.20(i).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: John Bolton Super PAC and MURs 7351, 7357, and 7382
4 Cabell Hobbs in his official
5 capacity as treasurer
6

7 **I. INTRODUCTION**

8 This matter was generated by complaints filed with the Federal Election Commission
9 (“Commission”). *See* 52 U.S.C. § 30109(a)(1). The complaints allege that while receiving
10 services from Cambridge Analytica LLC (“Cambridge”) during the 2014 election cycle, the John
11 Bolton Super PAC and Cabell Hobbs in his official capacity as treasurer (“Bolton PAC”)
12 violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and
13 Commission regulations that prohibit foreign nationals from directly or indirectly participating in
14 the decision-making process of a political committee’s contributions or expenditures in
15 connection with a federal election.¹ The complaints also allege that the Bolton PAC made
16 coordinated communications with the Thom Tillis Committee and Collin McMichael in his
17 official capacity as treasurer (“Tillis Committee”), and the North Carolina Republican Party and
18 Jason Lemons in his official capacity as treasurer (“NCRP”), using Cambridge as a “common
19 vendor.”²

20 For the reasons explained fully below, the Commission finds reason to believe that the
21 Bolton PAC violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

¹ *See* MUR 7351 Compl. (Mar. 26, 2018); MUR 7382 Compl. (May 10, 2018).

² *See* MUR 7357 Compl. (Mar. 29, 2018) at ¶14, ¶15, ¶28, Ex. A; MUR 7382 Compl. at 4, 6-8; MUR 7351 Compl. at ¶13. The Commission takes no action at this time as to the allegation that the John Bolton Super PAC and Cabell Hobbs in his official capacity as treasurer violated 52 U.S.C. §§ 30116(a), 30118(a), and 11 C.F.R. § 109.21.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Background**

3 Cambridge is a limited liability company organized in Delaware on December 31, 2013.³
4 SCL Group LTD (“SCL”) is based in England and registered in the United Kingdom on July 20,
5 2005.⁴ Cambridge reportedly began working for political committees in the U.S. during the
6 2014 election cycle.⁵ The Complaints allege, based on news reports, that Cambridge was
7 “effectively a shell” and “any contracts won by Cambridge . . . would be serviced by London-
8 based SCL and overseen by [Alexander] Nix, a British citizen,” who is a director of SCL and
9 chief executive of Cambridge.⁶ “Most SCL employees and contractors” were reportedly foreign
10 nationals from Canada or Europe.⁷

³ Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

⁴ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁵ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁶ See MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

⁷ NYT March 17 Article.

1 According to former employees quoted in media reports, during the 2014 election cycle,
2 Cambridge, like SCL, was “overwhelmingly staffed by non-U.S. citizens,”⁸ at least two of whom
3 “were still answering ultimately to [Alexander] Nix” while working for U.S. political
4 committees.⁹ Christopher Wylie, who worked for Cambridge during the 2014 election cycle and
5 is a foreign national, reportedly asserts that he and “many foreign nationals worked on the
6 campaigns, and many were embedded in the campaigns around the U.S.”¹⁰ Wylie also asserts
7 that he was personally part of “multiple conference calls in 2014” with Nix and Stephen K.
8 Bannon, a Cambridge board member, in which “strategic campaign matters were discussed.”¹¹
9 According to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company
10 was violating federal law by using foreign nationals to work on American political campaigns.¹²
11 However, Cambridge reportedly provided no compliance training for its foreign employees on

⁸ Timberg Article.

⁹ Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political> (“Guardian Article”).

¹⁰ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schechter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schechter Article”). Wylie apparently played a significant role in founding Cambridge. See NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schechter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”).

¹¹ MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schechter Article).

¹² Timberg Article.

1 what conduct to avoid in order to comply with federal law while working for U.S. political
2 committees.¹³

3 The primary service that Cambridge offered its clients was a form of voter targeting that
4 it described as “psychological profiling to reach voters with individually tailored messages.”¹⁴
5 Cambridge allegedly employed many foreign national data scientists, including Dr. Alexander
6 Tayler, who led the data science team as the company’s Chief Data Officer.¹⁵ Cambridge
7 reportedly helped political committees “decide what voters to target with political messages and
8 what messages to deliver to them,” while also offering additional services such as “fundraising,
9 planning events, and providing communications strategy[.]”¹⁶ Wylie asserts that he and other
10 foreign nationals working for Cambridge “weren’t just working on messaging” but “were
11 instructing campaigns on which messages go where and to who.”¹⁷ Other employees have
12 supported this assertion, claiming that Cambridge “didn’t handle only data” but worked on
13 message development and targeting strategy.¹⁸

¹³ Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

¹⁴ Timberg Article; *see also* Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), available at <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

¹⁵ MUR 7351 Compl. at ¶ 9.

¹⁶ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

¹⁷ *Id.* at ¶ 26 (quoting Schechter Article).

¹⁸ Timberg Article.

1 During the 2014 election cycle, Cambridge worked for several political committees,
2 including the Bolton PAC, an independent-expenditure-only political committee (“IEOPC”).¹⁹
3 The Bolton PAC reportedly hired Cambridge to perform a variety of tasks, from data modeling
4 to designing “concepts for advertisements for candidates supported by Mr. Bolton’s PAC,
5 including the 2014 campaign of Thom Tillis[.]”²⁰ According to Cambridge internal documents
6 that Wylie publicized, the Bolton PAC used Cambridge to “provide messaging and
7 communications support” and “made use of significant input from SCL on messaging and target
8 audiences.”²¹ The Bolton PAC’s “media teams took direction well and worked with Harris
9 MacLeod (SCL) to ensure each message was tailored in a way that would resonate with its
10 target.”²² Cambridge also provided “[d]irection and feedback on all creative [content]” and the
11 Bolton PAC’s “creative teams were given further guidance based on which messages resonated
12 most with target groups.”²³ Cambridge also reportedly drafted talking points for Ambassador
13 John Bolton to use to describe the services Cambridge was providing to his eponymous political
14 committee.²⁴

¹⁹ MUR 7351 Compl. at ¶ 13.

²⁰ *Id.* at ¶ 33 (quoting Matthew Rosenberg, *Bolton Was Early Beneficiary of Cambridge Analytica’s Facebook Data*, N.Y. TIMES (Mar. 23, 2018), available at <https://www.nytimes.com/2018/03/23/us/politics/bolton-cambridge-analyticas-facebook-data.html> (“NYT March 23 Article”).

²¹ Cambridge Analytica 2014 Activity Summary Report at 16, available at <https://www.washingtonpost.com/apps/g/page/politics/2014-cambridge-analytica-report-on-congressional-and-legislative-races/2294/> (“2014 Report”); see also Timberg Article (discussing and linking to 2014 Report, among other Cambridge documents).

²² 2014 Report at 16-17. MacLeod is allegedly a Canadian foreign national. See Issenberg Article at 2 (“Harris MacLeod [is] a Nova Scotian who worked as a political journalist in Ottawa [and] spent much of 2014 working for Cambridge Analytica’s marquee American clients. Harris worked for John Bolton’s super-PAC[.]”).

²³ 2014 Report at 17; see also Issenberg Article at 8 (“[Cambridge Analytica] advised Bolton’s team on the design of six ads, thirty seconds each, with wildly different creative approaches. One ad, targeted at voters modeled to be conscientious and agreeable, was set to upbeat music and showed Bolton standing outdoors on a bright day, matter-of-factly addressing the need to ‘leave a stronger, safer America for our children.’”).

²⁴ MUR 7351 Compl. at ¶ 33 (quoting NYT March 23 Article).

1 The Bolton PAC asserts that Cambridge employees did not have “direct or indirect
 2 decision-making authority” and that Bolton personally was the “sole decision maker” for the
 3 Bolton PAC, and while acknowledging that a Cambridge employee working for the Bolton PAC
 4 “may have been a foreign national,” it claims that only U.S. citizens had “final say” over any
 5 analysis that factored into the committee’s decisions.²⁵

6 **B. Legal Analysis**

7 1. Foreign Nationals May Not Directly or Indirectly Make Contributions,
 8 Donations, Expenditures, or Disbursements

9 The Act and Commission regulations prohibit any “foreign national” from directly or
 10 indirectly making a contribution or donation of money or other thing of value, or an expenditure,
 11 independent expenditure, or disbursement, in connection with a federal, state, or local election.²⁶
 12 The Act’s definition of “foreign national” includes an individual who is not a citizen or national
 13 of the United States and who is not lawfully admitted for permanent residence, as well as a
 14 “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership,
 15 association, corporation, organization, or other combination of persons organized under the laws
 16 of or having its principal place of business in a foreign country.”²⁷ Commission regulations
 17 implementing the Act’s foreign national prohibition provide:

²⁵ Resp. of Bolton PAC at 5, 7 (Sept. 7, 2018); *see id.*, Ex. A ¶¶ 9-11 (“At no time did Cambridge Analytica, or any of its employees[,] have any direct or indirect decision-making authority over the activities of the John Bolton Super PAC. In fact, Ambassador Bolton was the sole decision maker for the John Bolton Super PAC[, and] information conveyed to Ambassador Bolton from Cambridge Analytica was first analyzed and then delivered by [Bolton PAC general consultant] Campaign Solutions and [Bolton PAC Director Sarah] Tinsley.”).

²⁶ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

²⁷ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

1 A foreign national shall not direct, dictate, control, or directly or indirectly
2 participate in the decision-making process of any person, such as a corporation,
3 labor organization, political committee, or political organization with regard to
4 such person's Federal or non-Federal election-related activities, such as decisions
5 concerning the making of contributions, donations, expenditures, or
6 disbursements . . . or decisions concerning the administration of a political
7 committee.²⁸

8
9 The Commission has explained that this provision also bars foreign nationals from “involvement
10 in the management of a political committee.”²⁹

11 In light of these provisions, Commission regulations permit any person or company —
12 foreign or domestic — to provide goods or services to a political committee, without making a
13 contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary
14 course of business, and at the usual and normal charge, as long as foreign nationals do not
15 directly or indirectly participate in any committee's management or decision-making process in
16 connection with its election-related activities.³⁰ For example, in MUR 5998, the Commission
17 found that the foreign national owners of a venue did not make or facilitate a contribution to a
18 political committee by allowing the committee to rent the venue for a fundraising event.³¹ The

²⁸ 11 C.F.R. § 110.20(i).

²⁹ Contribution Limits and Prohibitions, 67 Fed. Reg. 69,928, 69,946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees' activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate's] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees”).

³⁰ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute a contribution under the Act. However, 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 or hiring a foreign national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution.

³¹ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

1 venue at issue was rented out for events in the ordinary course of business, and the owners
2 charged the committee the usual and normal amount for the service.³² The Commission noted
3 that there was no available information to suggest — and the foreign nationals and political
4 committee expressly denied — that the foreign nationals had any “decision-making role in the
5 event.”³³

6 The Commission has found that not all participation by foreign nationals in the election-
7 related activities of others will violate the Act. In MUR 6959, for example, the Commission
8 found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing
9 clerical duties, such as online research and translations, during a one month-long internship with
10 a party committee.³⁴ Similarly, in MURs 5987, 5995, and 6015, the Commission found no
11 reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services
12 to perform at a campaign fundraiser and agreeing to let a political committee use his name and
13 likeness in its emails promoting the concert and soliciting support, where the record did not
14 indicate that the foreign national had been involved in the committee’s decision-making process
15 in connection with the making of contributions, donations, expenditures, or disbursements.³⁵ By
16 contrast, the Commission has consistently found a violation of the foreign national prohibition

³² *Id.*

³³ *Id.* at 5.

³⁴ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not actually indicate that the foreign national participated in any political committee’s decision-making process). The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

³⁵ Factual and Legal Analysis at 6-9, MURs 5987, 5995, and 6015 (Sir Elton John); *see also* Factual and Legal Analysis at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller).

1 where foreign national officers or directors of a U.S. company participated in the company's
2 decisions to make contributions or in the management of its separate segregated fund.³⁶

3 2. There is Reason to Believe that the Bolton PAC Violated 52 U.S.C.
4 § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals Directly or
5 Indirectly Participated in a Decision-Making Process In Connection With
6 the Committee's Election-Related Spending

7 Cambridge's usual and normal business involved providing data analytics and message
8 targeting services, and there is no specific information suggesting that Cambridge charged any
9 committee less than its usual and normal rate for such services. Even if Cambridge, which was
10 organized under the laws of Delaware and therefore appears to be a domestic company, was,
11 *arguendo*, a foreign company, it could provide services to a political committee as a commercial
12 vendor without thereby making a contribution to that committee, but foreign nationals may not
13 directly or indirectly participate in any committee's management or decision-making process in
14 connection with its election-related spending.

15 Wylie, a Cambridge foreign national employee, appears to have participated in the
16 decision-making processes of Cambridge's clients in connection with their management or
17 election-related spending. Wylie reportedly admits that he "worked on all of the company's U.S.
18 political campaigns in 2014,"³⁷ and that he was personally part of "multiple conference calls in
19 2014" with Nix and Stephen K. Bannon, a Cambridge board member, in which "strategic

³⁶ See, e.g., Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company's board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company's election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc. ("APIC")) (U.S. corporation owned by foreign company violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

³⁷ Schechter Article.

1 campaign matters were discussed.”³⁸ During this period of time, Cambridge not only provided
2 political committees with communications and targeting advice, *i.e.*, advice about how to
3 effectively craft tailored communications and target them to receptive voters in order to
4 maximize the messages’ impact, but “directed” the committees in their messaging.³⁹

5 According to Wylie and internal Cambridge documents, he and other foreign nationals
6 were embedded in political committees and were “instructing campaigns on which messages go
7 where and to who.”⁴⁰ By providing strategic advice to committees on both the content and target
8 audience for their campaign communications, these foreign nationals may have helped shape
9 political committees’ election-related spending decisions.

10 The available information supports a finding that Wylie or other foreign national
11 Cambridge employees may have participated, directly or indirectly, in the Bolton PAC’s
12 management or decision-making process in connection with its election-related spending.
13 Cambridge reportedly provided “polling, focus groups and message development” services for
14 the Bolton PAC during Thom Tillis’s 2014 campaign for the U.S. Senate in North Carolina.⁴¹
15 Wylie reportedly claims that “three or four full-time [Cambridge] staffers embedded in Tillis’s
16 campaign on the ground in Raleigh [and all] of them were foreign nationals.”⁴² These assertions,
17 indicate that Wylie and other Cambridge foreign national employees may have worked with
18 several committees, including the Bolton PAC, in support of Tillis’s campaign for the U.S.

³⁸ Timberg Article.

³⁹ *See, e.g.*, 2014 Report at 16-17 (describing Cambridge’s successful “direction” of the Bolton PAC).

⁴⁰ Schechter Article.

⁴¹ NYT March 17 Article.

⁴² Schechter Article.

1 Senate. Wylie and another former Cambridge employee also reportedly contend that Cambridge
2 helped develop data models and message concepts for the Bolton PAC's communications
3 supporting Tillis during the 2014 election.⁴³

4 The Bolton PAC's denial of these allegations is contradicted by the information
5 provided by internal Cambridge documents, as well as the statements from Wylie and other
6 foreign national Cambridge employees. Despite the Bolton PAC's assertions that only U.S.
7 citizens had "final say" over any analysis that factored into its decisions and that Cambridge did
8 not have direct or indirect decision-making authority over the Bolton PAC's activities,⁴⁴ the key
9 issue is not whether Wylie or any other foreign national had direct or indirect decision-making
10 authority or final say regarding any analysis, but whether a foreign national participated, directly
11 or indirectly, in the Bolton PAC's management or decision-making process in connection with
12 its "election-related activities, such as decisions concerning the making of contributions,
13 donations, expenditures, or disbursements . . . or decisions concerning the administration of a
14 political committee."⁴⁵ Here, the available information, which includes Cambridge's
15 documented admission that it was directing the Bolton PAC's communications decisions,
16 supports the conclusion that foreign nationals provided strategic communications and targeting
17 advice, which the Bolton PAC used to determine how to most effectively utilize its resources,
18 and thus foreign nationals participated in a decision-making process in connection with the
19 committee's election-related spending.

⁴³ NYT March 23 Article.

⁴⁴ Resp. of Bolton PAC at 7; *see id.*, Ex. A ¶¶ 9-11.

⁴⁵ 11 C.F.R. § 110.20(i).

MURs 7351, 7357, and 7382 (John Bolton Super PAC)

Factual and Legal Analysis

Page 12 of 12

1 Based on all of the available information regarding the direct or indirect participation of
2 foreign nationals in a decision-making process in connection with the Bolton PAC's election-
3 related spending, the Commission finds reason to believe that the Bolton PAC violated 52 U.S.C.
4 § 30121 and 11 C.F.R. § 110.20(i).

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Thom Tillis Committee and Collin MURs 7351 and 7382
4 McMichael in his official capacity
5 as treasurer
6

7 **I. INTRODUCTION**

8 This matter was generated by complaints filed with the Federal Election Commission
9 (“Commission”). *See* 52 U.S.C. § 30109(a)(1). These complaints allege that the Thom Tillis
10 Committee and Collin McMichael in his official capacity as treasurer (“Tillis Committee”)
11 violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and
12 Commission regulations that prohibit foreign nationals from directly or indirectly participating in
13 the decision-making process of a political committee’s contributions or expenditures in
14 connection with a federal election. These allegations stem from services that Cambridge
15 Analytica LLC (“Cambridge”) provided to the Tillis Committee during the 2014 election cycle.¹
16 For the reasons explained fully below, the Commission finds reason to believe that the Tillis
17 Committee violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Background**

20 Cambridge is a limited liability company organized in Delaware on December 31, 2013.²
21 SCL Group LTD (“SCL”) is based in England and registered in the United Kingdom on July 20,
22 2005.³ Cambridge reportedly began working for political committees in the U.S. during the

¹ *See* MUR 7351 Compl. (Mar. 26, 2018); MUR 7382 Compl. (May 10, 2018).

² Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

³ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

1 2014 election cycle.⁴ The Complaints allege, based on news reports, that Cambridge was
 2 “effectively a shell” and “any contracts won by Cambridge . . . would be serviced by London-
 3 based SCL and overseen by [Alexander] Nix, a British citizen,” who is a director of SCL and
 4 chief executive of Cambridge.⁵ “Most SCL employees and contractors” were reportedly foreign
 5 nationals from Canada or Europe.⁶

6 According to former employees quoted in media reports, during the 2014 election cycle,
 7 Cambridge, like SCL, was “overwhelmingly staffed by non-U.S. citizens,”⁷ at least two of whom
 8 “were still answering ultimately to [Alexander] Nix” while working for U.S. political
 9 committees.⁸ Christopher Wylie, who worked for Cambridge during the 2014 election cycle and
 10 is a foreign national, reportedly asserts that he and “many foreign nationals worked on the

⁴ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁵ See MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

⁶ NYT March 17 Article.

⁷ Timberg Article.

⁸ Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political> (“Guardian Article”).

1 campaigns, and many were embedded in the campaigns around the U.S.”⁹ Wylie also asserts
2 that he was personally part of “multiple conference calls in 2014” with Nix and Stephen K.
3 Bannon, a Cambridge board member, in which “strategic campaign matters were discussed.”¹⁰
4 According to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company
5 was violating federal law by using foreign nationals to work on American political campaigns.¹¹
6 However, Cambridge reportedly provided no compliance training for its foreign employees on
7 what conduct to avoid in order to comply with federal law while working for U.S. political
8 committees.¹²

9 The primary service that Cambridge offered its clients was a form of voter targeting that
10 it described as “psychological profiling to reach voters with individually tailored messages.”¹³
11 Cambridge allegedly employed many foreign national data scientists, including Dr. Alexander

⁹ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schecter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schecter Article”). Wylie apparently played a significant role in founding Cambridge. See NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schecter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”).

¹⁰ MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schecter Article).

¹¹ Timberg Article.

¹² Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

¹³ Timberg Article; see also Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), available at <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

1 Tayler, who led the data science team as the company’s Chief Data Officer.¹⁴ Cambridge
2 reportedly helped political committees “decide what voters to target with political messages and
3 what messages to deliver to them,” while also offering additional services such as “fundraising,
4 planning events, and providing communications strategy[.]”¹⁵ Wylie asserts that he and other
5 foreign nationals working for Cambridge “weren’t just working on messaging” but “were
6 instructing campaigns on which messages go where and to who.”¹⁶ Other employees have
7 supported this assertion, claiming that Cambridge “didn’t handle only data” but worked on
8 message development and targeting strategy.¹⁷

9 During the 2014 election cycle, Cambridge worked for the Tillis Committee, Thom
10 Tillis’s authorized campaign committee for the U.S. Senate in North Carolina.¹⁸ Wylie
11 reportedly claims that “his largely foreign team” crafted and targeted messaging for Tillis’s
12 campaign.¹⁹ Cambridge’s own internal documents detail that the company was also contracted
13 by the North Carolina Republican Party (“NCRP”) to provide support for Tillis, other
14 Republican campaigns in North Carolina, and the NCRP itself.²⁰ The documents confirm that
15 Cambridge provided the Tillis Committee with message targeting services, noting that “local
16 campaign staff had ideas about how they wanted their target universes defined, but the

¹⁴ MUR 7351 Compl. at ¶ 9.

¹⁵ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

¹⁶ *Id.* at ¶ 26 (quoting Schechter Article).

¹⁷ Timberg Article.

¹⁸ MUR 7351 Compl. at ¶ 13.

¹⁹ Schechter Article.

²⁰ Cambridge Analytica 2014 Activity Summary Report at 12, *available at* <https://www.washingtonpost.com/apps/g/page/politics/2014-cambridge-analytica-report-on-congressional-and-legislative-races/2294/> (“2014 Report”).

1 [Cambridge] team was able to use their knowledge of the data to suggest more effective targeting
2 strategies.”²¹ Cambridge’s modeling and targeting work for the Tillis Committee reportedly
3 altered the content of the committee’s messages to focus on issues that Cambridge had identified
4 as resonating with potential voters, such as foreign terrorism, more than issues previously
5 prioritized by the committees, like state-wide education policy.²²

6 The Tillis Committee denies that Cambridge provided any media consulting services or
7 made any strategic decisions, claiming that all decisions regarding the use of Cambridge-
8 generated data were made by its own staffers, and that no Cambridge employees were involved
9 in the management or decision-making of the committee.²³ The Tillis Committee’s campaign
10 manager and general consultant both submitted sworn affidavits attesting that Cambridge served
11 only as a data vendor for the committee, that, for example, Cambridge “played no role in the
12 development or decisions about the Tillis [Committee] messaging or communications,”²⁴ and
13 that all communications and messaging decisions for the committee were made by the
14 committee’s campaign staff or media consultants, not Cambridge.²⁵

²¹ *Id.* at 14.

²² See Issenberg Article (“In North Carolina, where the company was paid \$150,000 by the state party and \$30,000 by Tillis’s campaign, Cambridge Analytica developed models to predict individual support, turnout likelihoods, and issues of concern that would recalibrate continuously based on interactions with voters[, and] that dynamic process allowed Tillis’s campaign to identify a sizable cluster of North Carolinians who prioritized foreign affairs — which encouraged Tillis to shift the conversation from state-level debates over education policy to charges that incumbent Kay Hagan had failed to take ISIS’s rise seriously.”); 2014 Report at 13 (discussing changing committee messaging to more “salient” issues such as national security).

²³ Resp. of Thom Tillis Comm. at 5-6 (May 25, 2018) (“Tillis Comm. Resp.”).

²⁴ Tillis Comm. Resp., Ex. C, ¶ 8 (Shumaker Affidavit).

²⁵ See *id.*, Ex. C, ¶¶ 8-12, 14-18 (Shumaker Affidavit); *id.*, Ex. D, ¶¶ 13-18 (Shaw Affidavit). The Tillis Committee also submitted an affidavit from its treasurer attesting that he had no reason to believe the vendor they were paying was foreign owned or operated. See *id.*, Ex. B, ¶¶ 9-11 (McMichael Affidavit).

1 **B. Legal Analysis**

2 1. Foreign Nationals May Not Directly or Indirectly Make Contributions,
3 Donations, Expenditures, or Disbursements

4 The Act and Commission regulations prohibit any “foreign national” from directly or
5 indirectly making a contribution or donation of money or other thing of value, or an expenditure,
6 independent expenditure, or disbursement, in connection with a federal, state, or local election.²⁶
7 The Act’s definition of “foreign national” includes an individual who is not a citizen or national
8 of the United States and who is not lawfully admitted for permanent residence, as well as a
9 “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership,
10 association, corporation, organization, or other combination of persons organized under the laws
11 of or having its principal place of business in a foreign country.”²⁷ Commission regulations
12 implementing the Act’s foreign national prohibition provide:

²⁶ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

²⁷ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

1 A foreign national shall not direct, dictate, control, or directly or indirectly
2 participate in the decision-making process of any person, such as a corporation,
3 labor organization, political committee, or political organization with regard to
4 such person's Federal or non-Federal election-related activities, such as decisions
5 concerning the making of contributions, donations, expenditures, or
6 disbursements . . . or decisions concerning the administration of a political
7 committee.²⁸

8
9 The Commission has explained that this provision also bars foreign nationals from “involvement
10 in the management of a political committee.”²⁹

11 In light of these provisions, Commission regulations permit any person or company —
12 foreign or domestic — to provide goods or services to a political committee, without making a
13 contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary
14 course of business, and at the usual and normal charge, as long as foreign nationals do not
15 directly or indirectly participate in any committee's management or decision-making process in
16 connection with its election-related activities.³⁰ For example, in MUR 5998, the Commission
17 found that the foreign national owners of a venue did not make or facilitate a contribution to a
18 political committee by allowing the committee to rent the venue for a fundraising event.³¹ The

²⁸ 11 C.F.R. § 110.20(i).

²⁹ Contribution Limits and Prohibitions, 67 Fed. Reg. 69,928, 69,946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees' activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate's] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees”).

³⁰ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute a contribution under the Act. However, 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 or hiring a foreign national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution.

³¹ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

1 venue at issue was rented out for events in the ordinary course of business, and the owners
2 charged the committee the usual and normal amount for the service.³² The Commission noted
3 that there was no available information to suggest — and the foreign nationals and political
4 committee expressly denied — that the foreign nationals had any “decision-making role in the
5 event.”³³

6 The Commission has found that not all participation by foreign nationals in the election-
7 related activities of others will violate the Act. In MUR 6959, for example, the Commission
8 found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing
9 clerical duties, such as online research and translations, during a one month-long internship with
10 a party committee.³⁴ Similarly, in MURs 5987, 5995, and 6015, the Commission found no
11 reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services
12 to perform at a campaign fundraiser and agreeing to let a political committee use his name and
13 likeness in its emails promoting the concert and soliciting support, where the record did not
14 indicate that the foreign national had been involved in the committee’s decision-making process
15 in connection with the making of contributions, donations, expenditures, or disbursements.³⁵ By
16 contrast, the Commission has consistently found a violation of the foreign national prohibition

³² *Id.*

³³ *Id.* at 5.

³⁴ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not actually indicate that the foreign national participated in any political committee’s decision-making process). The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

³⁵ Factual and Legal Analysis at 6-9, MURs 5987, 5995, and 6015 (Sir Elton John); *see also* Factual and Legal Analysis at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller).

1 where foreign national officers or directors of a U.S. company participated in the company's
2 decisions to make contributions or in the management of its separate segregated fund.³⁶

3 2. There is Reason to Believe that the Tillis Committee Violated 52 U.S.C.
4 § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals Directly or
5 Indirectly Participated in a Decision-Making Process Regarding the
6 Committee's Election-Related Activities

7 Cambridge's usual and normal business involved providing data analytics and message
8 targeting services, and there is no specific information suggesting that Cambridge charged any
9 committee less than its usual and normal rate for such services. Even if Cambridge, which was
10 organized under the laws of Delaware and therefore appears to be a domestic company, was,
11 *arguendo*, a foreign company, it could provide services to a political committee as a commercial
12 vendor without thereby making a contribution to that committee, but foreign nationals may not
13 directly or indirectly participate in any committee's management or decision-making process in
14 connection with its election-related spending.

15 Wylie, a Cambridge foreign national employee, appears to have participated in the
16 decision-making processes of Cambridge's clients in connection with their management or
17 election-related spending. Wylie reportedly admits that he "worked on all of the company's U.S.
18 political campaigns in 2014,"³⁷ and that he was personally part of "multiple conference calls in
19 2014" with Nix and Stephen K. Bannon, a Cambridge board member, in which "strategic

³⁶ See, e.g., Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company's board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company's election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc. ("APIC")) (U.S. corporation owned by foreign company violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

³⁷ Schechter Article.

1 campaign matters were discussed.”³⁸ During this period of time, Cambridge not only provided
2 political committees with communications and targeting advice, *i.e.*, advice about how to
3 effectively craft tailored communications and target them to receptive voters in order to
4 maximize the messages’ impact, but “directed” the committees in their messaging.³⁹

5 According to Wylie and internal Cambridge documents, he and other foreign nationals
6 were embedded in political committees and were “instructing campaigns on which messages go
7 where and to who.”⁴⁰ By providing strategic advice to committees on both the content and target
8 audience for their campaign communications, these foreign nationals may have helped shape
9 political committees’ election-related spending decisions.

10 The available information supports a finding that Wylie or other foreign national
11 Cambridge employees participated in the Tillis Committee’s management or decision-making
12 process in connection with its election-related spending. Cambridge reportedly provided
13 “polling, focus groups and message development” services for the Tillis Committee during
14 Thom Tillis’s 2014 campaign for the U.S. Senate in North Carolina.⁴¹ Wylie reportedly claims
15 that “three or four full-time [Cambridge] staffers embedded in Tillis’s campaign on the ground in
16 Raleigh [and all] of them were foreign nationals.”⁴² Another former Cambridge employee also
17 claims that most of the Tillis campaign’s messaging team was composed of foreign nationals.⁴³

³⁸ Timberg Article.

³⁹ *See, e.g.*, 2014 Report at 16-17 (describing Cambridge’s successful “direction” of another committee).

⁴⁰ Schecter Article.

⁴¹ NYT March 17 Article.

⁴² Schecter Article.

⁴³ *Id.*

1 These assertions indicate that Cambridge’s foreign national employees were working with the
2 Tillis Committee.

3 The Tillis Committee denies the allegations, and its general consultant, Paul Shumaker,
4 and campaign manager, Jordan Shaw, both attest in sworn affidavits that Cambridge/SCL had
5 “no role in the development or decisions about the Tillis Campaign messaging or
6 communications,” and that the Tillis Committee’s “messaging, communications, and campaign
7 strategy decisions” were made by others.⁴⁴ However, the other information in the record
8 discussed above — including Cambridge’s internal report and the reported statements by Wylie
9 and other Cambridge employees — specifically indicates that, contrary to these affidavits,
10 Cambridge foreign national employees were embedded in the campaign and provided strategic
11 communications and targeting advice that the Tillis Committee used to determine how to most
12 effectively utilize its resources.⁴⁵ On balance, the overall record sufficiently supports the
13 allegation that foreign nationals directly or indirectly participated in the Tillis Committee’s
14 management or decision-making process in connection with its election-related spending,
15 warranting further investigation.

16 Accordingly, the Commission finds reason to believe that the Tillis Committee violated
17 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

⁴⁴ Tillis Comm. Resp., Ex. C, ¶¶ 8-12, 14-18 (Shumaker Affidavit); *id.*, Ex. D, ¶¶ 13-18 (Shaw Affidavit). Both of these affidavits refer only to “SCL USA,” although a third affidavit from Tillis Committee treasurer Collin McMichael states that Cambridge was doing business as SCL USA. *See id.*, Ex. B, ¶ 8 (McMichael Affidavit). This latter affidavit refers to “SLC USA” throughout the affidavit when SCL USA was likely intended.

⁴⁵ *See* Schecter Article; NYT March 17 Article; 2014 Report at 12.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Art Robinson for Congress and MUR 7351
4 Art Robinson in his official capacity
5 as treasurer
6

7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission
9 (“Commission”). *See* 52 U.S.C. § 30109(a)(1). The complaint alleges that Art Robinson for
10 Congress and Art Robinson in his official capacity as treasurer (the “Robinson Committee”)
11 violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and
12 Commission regulations that prohibit foreign nationals from directly or indirectly participating in
13 the decision-making process of a political committee’s contributions or expenditures in
14 connection with a federal election. These allegations stem from services that Cambridge
15 Analytica LLC (“Cambridge”) provided to the Robinson Committee during the 2014 election
16 cycle.¹ For the reasons explained fully below, the Commission finds reason to believe that the
17 Robinson Committee violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

18 **II. FACTUAL AND LEGAL ANALYSIS**

19 **A. Background**

20 Cambridge is a limited liability company organized in Delaware on December 31, 2013.²
21 SCL Group LTD (“SCL”) is based in England and registered in the United Kingdom on July 20,
22 2005.³ Cambridge reportedly began working for political committees in the U.S. during the

¹ *See* MUR 7351 Compl. (Mar. 26, 2018).

² Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

³ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

1 2014 election cycle.⁴ The Complaints allege, based on news reports, that Cambridge was
2 “effectively a shell” and “any contracts won by Cambridge . . . would be serviced by London-
3 based SCL and overseen by [Alexander] Nix, a British citizen,” who is a director of SCL and
4 chief executive of Cambridge.⁵ “Most SCL employees and contractors” were reportedly foreign
5 nationals from Canada or Europe.⁶

6 According to former employees quoted in media reports, during the 2014 election cycle,
7 Cambridge, like SCL, was “overwhelmingly staffed by non-U.S. citizens,”⁷ at least two of whom
8 “were still answering ultimately to [Alexander] Nix” while working for U.S. political
9 committees.⁸ Christopher Wylie, who worked for Cambridge during the 2014 election cycle and
10 is a foreign national, reportedly asserts that he and “many foreign nationals worked on the

⁴ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁵ See MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

⁶ NYT March 17 Article.

⁷ Timberg Article.

⁸ Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political> (“Guardian Article”).

1 campaigns, and many were embedded in the campaigns around the U.S.”⁹ Wylie also asserts
2 that he was personally part of “multiple conference calls in 2014” with Nix and Stephen K.
3 Bannon, a Cambridge board member, in which “strategic campaign matters were discussed.”¹⁰
4 According to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company
5 was violating federal law by using foreign nationals to work on American political campaigns.¹¹
6 However, Cambridge reportedly provided no compliance training for its foreign employees on
7 what conduct to avoid in order to comply with federal law while working for U.S. political
8 committees.¹²

9 The primary service that Cambridge offered its clients was a form of voter targeting that
10 it described as “psychological profiling to reach voters with individually tailored messages.”¹³
11 Cambridge allegedly employed many foreign national data scientists, including Dr. Alexander

⁹ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schecter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schecter Article”). Wylie apparently played a significant role in founding Cambridge. See NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schecter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”).

¹⁰ MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schecter Article).

¹¹ Timberg Article.

¹² Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

¹³ Timberg Article; see also Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), available at <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

1 Tayler, who led the data science team as the company’s Chief Data Officer.¹⁴ Cambridge
2 reportedly helped political committees “decide what voters to target with political messages and
3 what messages to deliver to them,” while also offering additional services such as “fundraising,
4 planning events, and providing communications strategy[.]”¹⁵ Wylie asserts that he and other
5 foreign nationals working for Cambridge “weren’t just working on messaging” but “were
6 instructing campaigns on which messages go where and to who.”¹⁶ Other employees have
7 supported this assertion, claiming that Cambridge “didn’t handle only data” but worked on
8 message development and targeting strategy.¹⁷

9 During the 2014 election cycle, Cambridge worked for several political committees,
10 including the Robinson Committee, Arthur Robinson’s authorized campaign committee in
11 Oregon’s 4th Congressional District.¹⁸ For the Robinson Committee, Cambridge states that it
12 took on a “comprehensive set of responsibilities and effectively managed the campaign in its
13 entirety, with strategic advice channeled through US nationals on the [Cambridge-SCL] team.”¹⁹
14 Cambridge’s 2014 internal assessment report noted that although the Robinson Committee hired
15 Cambridge to provide “supportive intervention to augment an existing campaign
16 infrastructure[,] . . . on the ground, it became clear that no such professional ‘campaign team’

¹⁴ MUR 7351 Compl. at ¶ 9.

¹⁵ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

¹⁶ *Id.* at ¶ 26 (quoting Schechter Article).

¹⁷ Timberg Article.

¹⁸ MUR 7351 Compl. at ¶ 13.

¹⁹ Cambridge Analytica 2014 Activity Summary Report at 1, *available at* <https://www.washingtonpost.com/archive/local/2014/04/22/page/politics/2014-cambridge-analytica-report-on-congressional-and-legislative-races/2294/> (“2014 Report”); *see* MUR 7351 Compl. at ¶ 31 (quoting Timberg Article).

1 existed[.]”²⁰ As such, Cambridge supplied a wide range of deliverables, such as
2 “communications strategy, including key topics and slogans[,] talking points, speeches, planning
3 for events and candidate travels[,]” and management of a range of campaign functions from
4 canvassing to social media engagement.²¹

5 Robinson, who responded on behalf of his authorized committee, asserts that all
6 “resource allocation and campaign decisions” concerning the committee’s election activity were
7 “made by our campaign” but acknowledges that in formulating those decisions, the Robinson
8 Committee “listened to advice from many individuals and organizations, including Cambridge
9 Analytica.”²²

10 **B. Legal Analysis**

11 1. Foreign Nationals May Not Directly or Indirectly Make Contributions, 12 Donations, Expenditures, or Disbursements

13 The Act and Commission regulations prohibit any “foreign national” from directly or
14 indirectly making a contribution or donation of money or other thing of value, or an expenditure,
15 independent expenditure, or disbursement, in connection with a federal, state, or local election.²³

16 The Act’s definition of “foreign national” includes an individual who is not a citizen or national
17 of the United States and who is not lawfully admitted for permanent residence, as well as a
18 “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership,

²⁰ 2014 Report at 2.

²¹ *Id.* at 4.

²² Arthur Robinson Resp. at 1-2 (Apr. 18, 2018).

²³ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

1 association, corporation, organization, or other combination of persons organized under the laws
2 of or having its principal place of business in a foreign country.”²⁴ Commission regulations
3 implementing the Act’s foreign national prohibition provide:

4 A foreign national shall not direct, dictate, control, or directly or indirectly
5 participate in the decision-making process of any person, such as a corporation,
6 labor organization, political committee, or political organization with regard to
7 such person’s Federal or non-Federal election-related activities, such as decisions
8 concerning the making of contributions, donations, expenditures, or
9 disbursements . . . or decisions concerning the administration of a political
10 committee.²⁵

11
12 The Commission has explained that this provision also bars foreign nationals from “involvement
13 in the management of a political committee.”²⁶

14 In light of these provisions, Commission regulations permit any person or company —
15 foreign or domestic — to provide goods or services to a political committee, without making a
16 contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary
17 course of business, and at the usual and normal charge, as long as foreign nationals do not
18 directly or indirectly participate in any committee’s management or decision-making process in
19 connection with its election-related activities.²⁷ For example, in MUR 5998, the Commission

²⁴ 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

²⁵ 11 C.F.R. § 110.20(i).

²⁶ Contribution Limits and Prohibitions, 67 Fed. Reg. 69,928, 69,946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees”).

²⁷ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute a contribution under the Act. However, 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 or hiring a foreign

1 found that the foreign national owners of a venue did not make or facilitate a contribution to a
2 political committee by allowing the committee to rent the venue for a fundraising event.²⁸ The
3 venue at issue was rented out for events in the ordinary course of business, and the owners
4 charged the committee the usual and normal amount for the service.²⁹ The Commission noted
5 that there was no available information to suggest — and the foreign nationals and political
6 committee expressly denied — that the foreign nationals had any “decision-making role in the
7 event.”³⁰

8 The Commission has found that not all participation by foreign nationals in the election-
9 related activities of others will violate the Act. In MUR 6959, for example, the Commission
10 found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing
11 clerical duties, such as online research and translations, during a one month-long internship with
12 a party committee.³¹ Similarly, in MURs 5987, 5995, and 6015, the Commission found no
13 reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services
14 to perform at a campaign fundraiser and agreeing to let the political committee use his name and
15 likeness in its emails promoting the concert and soliciting support, where the record did not
16 indicate that the foreign national had been involved in the committee’s decision-making process

national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution.

²⁸ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

²⁹ *Id.*

³⁰ *Id.* at 5.

³¹ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not indicate that the foreign national participated in any political committee’s decision-making process). The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca).

1 in connection with the making of contributions, donations, expenditures, or disbursements.³² By
2 contrast, the Commission has consistently found a violation of the foreign national prohibition
3 where foreign national officers or directors of a U.S. company participated in the company's
4 decisions to make contributions or in the management of its separate segregated fund.³³

5 2. There is Reason to Believe that the Robinson Committee Violated
6 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i) When Foreign Nationals
7 Directly or Indirectly Participated in a Decision-Making Process
8 Regarding the Committee's Election-Related Activities

9 Cambridge's usual and normal business involved providing data analytics and message
10 targeting services, and there is no specific information suggesting that Cambridge charged any
11 committee less than its usual and normal rate for such services. Even if Cambridge, which was
12 organized under the laws of Delaware and therefore appears to be a domestic company, was,
13 *arguendo*, a foreign company, it could provide services to a political committee as a commercial
14 vendor without thereby making a contribution to that committee, but foreign nationals may not
15 directly or indirectly participate in any committee's management or decision-making process in
16 connection with its election-related spending.

17 Wylie, a Cambridge foreign national employee, appears to have participated in the
18 decision-making processes of Cambridge's clients with respect to their election-related activities.

³² Factual and Legal Analysis at 6-9, MURs 5987, 5995, and 6015 (Hillary Clinton for President); *see also* Factual and Legal Analysis at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller).

³³ *See, e.g.*, Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company's board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company's election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc. ("APIC")) (U.S. corporation owned by foreign company violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

1 Wylie reportedly admits that he “worked on all of the company’s U.S. political campaigns in
2 2014,”³⁴ and that he was personally part of “multiple conference calls in 2014” with Nix and
3 Stephen K. Bannon, a Cambridge board member, in which “strategic campaign matters were
4 discussed.”³⁵ During this period of time, Cambridge not only provided political committees with
5 communications and targeting advice, *i.e.*, advice about how to effectively craft tailored
6 communications and target them to receptive voters in order to maximize the messages’ impact,
7 but “directed” the committees in their messaging.³⁶

8 According to Wylie and internal Cambridge documents, he and other foreign nationals
9 were embedded in political committees and were “instructing campaigns on which messages go
10 where and to who.”³⁷ By providing strategic advice to committees on both the content and target
11 audience for their campaign communications, Wylie may have helped shape political
12 committees’ election-related spending decisions.

13 The available information supports a finding that Wylie or other foreign national
14 Cambridge employees may have participated in the decision-making processes with regard to
15 election-related activities of the Robinson Committee. In contrast to the circumstances presented
16 in Advisory Opinion 2004-26, it appears that foreign nationals were “managing or participating
17 in the decisions” of the Robinson Committee, because Cambridge, which employed mostly
18 foreigners in 2014, assumed “comprehensive” responsibilities for the Robinson Committee
19 during the 2014 election cycle, including managing basic campaign functions and providing

³⁴ Schechter Article.

³⁵ Timberg Article.

³⁶ *See, e.g.*, 2014 Report at 16-17 (describing Cambridge’s successful “direction” of the Bolton PAC).

³⁷ Schechter Article.

1 strategic advice.³⁸ Robinson acknowledges that Cambridge, through its foreign national
2 employees, was at least indirectly participating in a decision-making process material to the
3 committee's election-related spending.³⁹ Even if, as Robinson contends, the Robinson
4 Committee's staff made all final decisions regarding the committee's management and electoral
5 strategy, the record indicates that Wylie or other foreign national Cambridge employees
6 participated, either directly or indirectly, in the Robinson Committee's management or decision-
7 making process in connection with its expenditures.

8 Based on the available information regarding the direct or indirect participation of foreign
9 nationals in a decision-making process with respect to the Robinson Committee's election-
10 related activity, the Commission finds reason to believe that the Robinson Committee violated
11 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

³⁸ Advisory Op. 2004-26 at 3; 2014 Report at 1.

³⁹ See Arthur Robinson Resp. at 1-2.

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Alexander Nix MURs 7350, 7351, and 7382

4
5 **I. INTRODUCTION**

6 This matter was generated by complaints filed with the Federal Election Commission
7 (“Commission”). *See* 52 U.S.C. § 30109(a)(1). These complaints allege that Alexander Nix, a
8 foreign national and Chief Executive Officer of Cambridge Analytica LLC (“Cambridge”),
9 violated the provisions of the Federal Election Campaign Act of 1971, as amended (“Act”), and
10 Commission regulations that prohibit foreign nationals from directly or indirectly participating in
11 the decision-making process of a political committee’s contributions or expenditures in
12 connection with a federal election.

13 These allegations stem from services that Cambridge provided to four political
14 committees during the 2014 election cycle — the Thom Tillis Committee and Collin McMichael
15 in his official capacity as treasurer (“Tillis Committee”); the John Bolton Super PAC and Cabell
16 Hobbs in his official capacity as treasurer (“Bolton PAC”); the North Carolina Republican Party
17 and Jason Lemons in his official capacity as treasurer (“NCRP”); and Art Robinson for Congress
18 and Art Robinson in his official capacity as treasurer (the “Robinson Committee”).¹

19 For the reasons explained fully below, the Commission finds reason to believe that Nix
20 violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i).

¹ *See* MUR 7350 Compl. (Mar. 26, 2018); MUR 7351 Compl. (Mar. 26, 2018); MUR 7382 Compl. (May 10, 2018).

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Background**

3 Cambridge is a limited liability company organized in Delaware on December 31, 2013.²
4 SCL Group LTD (“SCL”) is based in England and registered in the United Kingdom on July 20,
5 2005.³ Cambridge reportedly began working for political committees in the U.S. during the
6 2014 election cycle.⁴ The Complaints allege, based on news reports, that Cambridge was
7 “effectively a shell” and “any contracts won by Cambridge . . . would be serviced by London-
8 based SCL and overseen by [Alexander] Nix, a British citizen,” who is a director of SCL and
9 chief executive of Cambridge.⁵ “Most SCL employees and contractors” were reportedly foreign
10 nationals from Canada or Europe.⁶

² Cambridge Analytica LLC, Delaware Div. of Corps., <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> (viewed July 19, 2018).

³ SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098> (last visited Oct. 29, 2018).

⁴ See MUR 7351 Compl. at ¶¶ 5, 13; Craig Timberg and Tom Hamburger, *Former Cambridge Analytica Workers Say Firm Sent Foreigners to Advise U.S. Campaigns*, WASH. POST (Mar. 25, 2018), available at https://www.washingtonpost.com/politics/former-cambridge-analytica-workers-say-firm-sent-foreigners-to-advise-us-campaigns/2018/03/25/6a0d7d90-2fa2-11e8-911f-ca7f68bff0fc_story.html (“Timberg Article”) (cited in MUR 7351 Complaint) (“The company aggressively courted political work beginning in 2014[.]”).

⁵ See MUR 7351 Compl. at ¶ 16 (citing Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. TIMES (Mar. 17, 2018), available at <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html> (“NYT March 17 Article”)); Matthew Rosenberg, *Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal*, N.Y. TIMES (Mar. 20, 2018), available at <https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html> (“[The SCL Group and Cambridge Analytica] were set up with a convoluted corporate structure, and their operations are deeply intertwined. Mr. Nix, for instance, holds dual appointments at the two companies. Cambridge Analytica is registered in Delaware . . . but it is effectively a shell — it holds intellectual property rights to its psychographic modeling tools, yet its clients are served by the staff at London-based SCL and overseen by Mr. Nix, who is a British citizen.”); see also SCL Group Limited, U.K. Companies House Registration, Company No. 05514098, <https://beta.companieshouse.gov.uk/company/05514098/officers> (last visited Oct. 29, 2018) (listing Nix as SCL director from 2005-2012 and from 2016-2018).

⁶ NYT March 17 Article.

1 According to former employees quoted in media reports, during the 2014 election cycle,
2 Cambridge, like SCL, was “overwhelmingly staffed by non-U.S. citizens,”⁷ at least two of whom
3 “were still answering ultimately to [Alexander] Nix” while working for U.S. political
4 committees.⁸ Christopher Wylie, who worked for Cambridge during the 2014 election cycle and
5 is a foreign national, reportedly asserts that he and “many foreign nationals worked on the
6 campaigns, and many were embedded in the campaigns around the U.S.”⁹ Wylie also asserts
7 that he was personally part of “multiple conference calls in 2014” with Nix and Stephen K.
8 Bannon, a Cambridge board member, in which “strategic campaign matters were discussed.”¹⁰
9 According to Wylie, on some of these calls, Cambridge’s leaders discussed whether the company
10 was violating federal law by using foreign nationals to work on American political campaigns.¹¹
11 However, Cambridge reportedly provided no compliance training for its foreign employees on

⁷ Timberg Article.

⁸ MUR 7350 Compl. at ¶ 23 (citing Carole Cadwalladr and Emma Graham-Harrison, *Staff Claim Cambridge Analytica Ignored US Ban on Foreigners Working on Elections*, GUARDIAN (Mar. 17, 2018), available at <https://www.theguardian.com/uk-news/2018/mar/17/cambridge-analytica-non-american-employees-political> (“Guardian Article”)).

⁹ MUR 7351 Compl. at ¶ 26 (citing Anna R. Schecter, *Wylie: Foreigners Worked for Cambridge Analytica on NC Senate Campaign*, NBC NEWS (Mar. 23, 2018), available at <https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526> (“Schecter Article”)). Wylie apparently played a significant role in founding Cambridge. See NYT March 17 Article (“[Wylie] helped found Cambridge and worked there until late 2014.”). Wylie reportedly left Cambridge at the end of the 2014 election cycle, although there is some dispute as to precisely when he left the company. Schecter Article (“Cambridge has said that Wylie left the company in July 2014. Wylie [claims that] while he gave notice in July, he continued to work for the company until just before the elections on Nov. 4, 2014.”). The circumstances of Wylie’s departure are also controverted: Wylie claims that he resigned because of his growing unease with Cambridge, while Cambridge contends that Wylie departed to start a competing company and became disgruntled when Cambridge sued him to enforce its intellectual property rights. See Timberg Article at 4; Resp. of Alexander Nix, Ex. 1 ¶¶ 10-19 (July 10, 2018).

¹⁰ MUR 7351 Compl. at ¶ 30 (quoting Timberg Article). Both Nix and Bannon, along with three others, are described by an internal Cambridge legal memorandum as “managers” of Cambridge; the memorandum notes that “Cambridge is currently being managed day to day by Mr. Nix,” a foreign national. CONFIDENTIAL MEMORANDUM FROM LAURENCE LEVY TO REBEKAH MERCER, STEVE BANNON, AND ALEXANDER NIX at 6 (July 22, 2014), available at <http://cdn.cnn.com/cnn/2018/images/03/26/levy.memo.pdf> (discussed in Schecter Article).

¹¹ Timberg Article.

1 what conduct to avoid in order to comply with federal law while working for U.S. political
2 committees.¹²

3 The primary service that Cambridge offered its clients was a form of voter targeting that
4 it described as “psychological profiling to reach voters with individually tailored messages.”¹³
5 Cambridge allegedly employed many foreign national data scientists, including Dr. Alexander
6 Tayler, who led the data science team as the company’s Chief Data Officer.¹⁴ Cambridge
7 reportedly helped political committees “decide what voters to target with political messages and
8 what messages to deliver to them,” while also offering additional services such as “fundraising,
9 planning events, and providing communications strategy[.]”¹⁵ Wylie asserts that he and other
10 foreign nationals working for Cambridge “weren’t just working on messaging” but “were
11 instructing campaigns on which messages go where and to who.”¹⁶ Other employees have
12 supported this assertion, claiming that Cambridge “didn’t handle only data” but worked on
13 message development and targeting strategy.¹⁷

14 During the 2014 election cycle, Cambridge worked for several political committees,
15 including the Bolton PAC, an independent-expenditure-only political committee (“IEOPC”); the

¹² Guardian Article (“There were no briefings on the kind of work that non-US citizens should avoid, or warnings about the legal risks.”).

¹³ Timberg Article; *see also* Sasha Issenberg, *Cruz-Connected Data Miner Aims to Get Inside U.S. Voters’ Heads*, BLOOMBERG (Nov. 12, 2015), *available at* <https://www.bloomberg.com/news/features/2015-11-12/is-the-republican-party-s-killer-data-app-for-real-> (“Issenberg Article”) (“Cambridge Analytica’s trophy product is ‘psychographic profiles’ of every potential voter in the U.S. interwoven with more conventional political data. The emphasis on psychology helps to differentiate the Brits from other companies that specialized in ‘microtargeting,’ a catch-all term typically used to describe any analysis that uses statistical modeling to predict voter intent at the individual level.”).

¹⁴ MUR 7350 Compl. at ¶ 22; MUR 7351 Compl. at ¶ 9.

¹⁵ MUR 7351 Compl. at ¶ 28 (quoting Timberg Article).

¹⁶ *Id.* at ¶ 26 (quoting Schechter Article).

¹⁷ Timberg Article.

1 Tillis Committee, Thom Tillis’s authorized campaign committee for the U.S. Senate in North
2 Carolina; the NCRP, a state party committee supporting Tillis’s campaign; and the Robinson
3 Committee, Arthur Robinson’s authorized campaign committee in Oregon’s 4th Congressional
4 District.¹⁸

5 The Bolton PAC reportedly hired Cambridge to perform a variety of tasks, from data
6 modeling to designing “concepts for advertisements for candidates supported by Mr. Bolton’s
7 PAC, including the 2014 campaign of Thom Tillis[.]”¹⁹ According to Cambridge internal
8 documents that Wylie publicized, the Bolton PAC used Cambridge to “provide messaging and
9 communications support” and “made use of significant input from SCL on messaging and target
10 audiences.”²⁰ The Bolton PAC’s “media teams took direction well and worked with Harris
11 MacLeod (SCL) to ensure each message was tailored in a way that would resonate with its
12 target.”²¹ Cambridge also provided “[d]irection and feedback on all creative [content]” and the
13 Bolton PAC’s “creative teams were given further guidance based on which messages resonated
14 most with target groups.”²² Cambridge also reportedly drafted talking points for Ambassador

¹⁸ MUR 7351 Compl. at ¶ 13.

¹⁹ MUR 7351 Compl. at ¶ 33 (quoting Matthew Rosenberg, *Bolton Was Early Beneficiary of Cambridge Analytica’s Facebook Data*, N.Y. TIMES (Mar. 23, 2018), available at <https://www.nytimes.com/2018/03/23/us/politics/bolton-cambridge-analyticas-facebook-data.html> (“NYT March 23 Article”).

²⁰ Cambridge Analytica 2014 Activity Summary Report at 16, available at <https://www.washingtonpost.com/apps/g/page/politics/2014-cambridge-analytica-report-on-congressional-and-legislative-races/2294/> (“2014 Report”); see also Timberg Article (discussing and linking to 2014 Report, among other Cambridge documents).

²¹ 2014 Report at 16-17. MacLeod is allegedly a Canadian foreign national. See Issenberg Article at 2 (“Harris MacLeod [is] a Nova Scotian who worked as a political journalist in Ottawa [and] spent much of 2014 working for Cambridge Analytica’s marquee American clients. Harris worked for John Bolton’s super-PAC[.]”).

²² 2014 Report at 17; see also Issenberg Article at 8 (“[Cambridge Analytica] advised Bolton’s team on the design of six ads, thirty seconds each, with wildly different creative approaches. One ad, targeted at voters modeled to be conscientious and agreeable, was set to upbeat music and showed Bolton standing outdoors on a bright day, matter-of-factly addressing the need to ‘leave a stronger, safer America for our children.’”).

1 John Bolton to use to describe the services Cambridge was providing to his eponymous political
2 committee.²³

3 For Tillis’s 2014 U.S. Senate race in North Carolina, Wylie reportedly claims that “his
4 largely foreign team” crafted and targeted messaging for Tillis’s campaign.²⁴ Cambridge’s
5 documents detail that the company was also contracted by the NCRP to provide support for
6 Tillis, other Republican campaigns in North Carolina, and the NCRP.²⁵ The documents confirm
7 that Cambridge provided the NCRP and Tillis Committee with message targeting services,
8 noting that “local campaign staff had ideas about how they wanted their target universes defined,
9 but the [Cambridge] team was able to use their knowledge of the data to suggest more effective
10 targeting strategies.”²⁶ Cambridge’s modeling and targeting work for the NCRP and Tillis
11 Committee reportedly altered the content of those committees’ messages to focus on issues that
12 Cambridge had identified as resonating with potential voters, such as foreign terrorism, more
13 than issues previously prioritized by the committees, like state-wide education policy.²⁷

14 For the Robinson Committee, Cambridge states that it took on a “comprehensive set of
15 responsibilities and effectively managed the campaign in its entirety, with strategic advice

²³ MUR 7351 Compl. at ¶ 33 (quoting NYT March 23 Article).

²⁴ Schechter Article.

²⁵ 2014 Report at 12.

²⁶ *Id.* at 14.

²⁷ See Issenberg Article (“In North Carolina, where the company was paid \$150,000 by the state party and \$30,000 by Tillis’s campaign, Cambridge Analytica developed models to predict individual support, turnout likelihoods, and issues of concern that would recalibrate continuously based on interactions with voters[, and] that dynamic process allowed Tillis’s campaign to identify a sizable cluster of North Carolinians who prioritized foreign affairs — which encouraged Tillis to shift the conversation from state-level debates over education policy to charges that incumbent Kay Hagan had failed to take ISIS’s rise seriously.”); 2014 Report at 13 (discussing changing committee messaging to more “salient” issues such as national security); see also 2014 Report at 16, 19 (discussing Bolton PAC’s desire to focus on national security and detailing successes based on national security-focused messaging).

1 channeled through US nationals on the [Cambridge-SCL] team.”²⁸ Cambridge’s 2014 internal
2 assessment report noted that although the Robinson Committee hired Cambridge to provide
3 “supportive intervention to augment an existing campaign infrastructure[,] . . . on the ground, it
4 became clear that no such professional ‘campaign team’ existed[.]”²⁹ As such, Cambridge
5 supplied a wide range of deliverables, such as “communications strategy, including key topics
6 and slogans[,] talking points, speeches, planning for events and candidate travels[,]” and
7 management of a range of campaign functions from canvassing to social media engagement.³⁰

8 **B. Legal Analysis**

9 1. Foreign Nationals May Not Directly or Indirectly Make Contributions, 10 Donations, Expenditures, or Disbursements

11 The Act and Commission regulations prohibit any “foreign national” from directly or
12 indirectly making a contribution or donation of money or other thing of value, or an expenditure,
13 independent expenditure, or disbursement, in connection with a federal, state, or local election.³¹
14 The Act’s definition of “foreign national” includes an individual who is not a citizen or national
15 of the United States and who is not lawfully admitted for permanent residence, as well as a
16 “foreign principal” as defined at 22 U.S.C. § 611(b), which, in turn, includes a “partnership,
17 association, corporation, organization, or other combination of persons organized under the laws

²⁸ 2014 Report at 1; *see* MUR 7351 Compl. at ¶ 31 (quoting Timberg Article).

²⁹ 2014 Report at 2.

³⁰ *Id.* at 4.

³¹ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b), (c), (e), (f). Courts have consistently upheld the provisions of the Act prohibiting foreign national contributions on the ground that the government has a clear, compelling interest in limiting the influence of foreigners over the activities and processes that are integral to democratic self-government, which include making political contributions and express-advocacy expenditures. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288-89 (D.D.C. 2011), *aff’d* 132 S. Ct. 1087 (2012); *United States v. Singh*, 924 F.3d 1030, 1040-44 (9th Cir. 2019).

1 of or having its principal place of business in a foreign country.”³² Commission regulations
2 implementing the Act’s foreign national prohibition provide:

3 A foreign national shall not direct, dictate, control, or directly or indirectly
4 participate in the decision-making process of any person, such as a corporation,
5 labor organization, political committee, or political organization with regard to
6 such person’s Federal or non-Federal election-related activities, such as decisions
7 concerning the making of contributions, donations, expenditures, or
8 disbursements . . . or decisions concerning the administration of a political
9 committee.³³

10
11 The Commission has explained that this provision also bars foreign nationals from “involvement
12 in the management of a political committee.”³⁴

13 In light of these provisions, Commission regulations permit any person or company —
14 foreign or domestic — to provide goods or services to a political committee, without making a
15 contribution, if that person or company does so as a “commercial vendor,” *i.e.*, in the ordinary
16 course of business, and at the usual and normal charge, as long as foreign nationals do not
17 directly or indirectly participate in any committee’s management or decision-making process in
18 connection with its election-related activities.³⁵ For example, in MUR 5998, the Commission

³² 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

³³ 11 C.F.R. § 110.20(i).

³⁴ Contribution Limits and Prohibitions, 67 Fed. Reg. 69,928, 69,946 (Nov. 19, 2002); *see also* Advisory Op. 2004-26 at 2-3 (Weller) (noting that foreign national prohibition at section 110.20(i) is broad and concluding that, while a foreign national fiancé of the candidate could participate in committees’ activities as a volunteer without making a prohibited contribution, she “must not participate in [the candidate’s] decisions regarding his campaign activities” and “must refrain from managing or participating in the decisions of the Committees.”).

³⁵ 11 C.F.R. § 114.2(f)(1); *see* 11 C.F.R. § 116.1(c) (defining “commercial vendor” as “any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services). The Act defines a contribution to include “anything of value,” which in turn includes all “in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.” 11 C.F.R. § 100.52(d)(1); *see* 52 U.S.C. § 30101(8). Goods or services provided at the usual and normal charge do not constitute a contribution under the Act. However, 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 or hiring a foreign national in a bona fide commercial transaction to perform services for a federal campaign, could potentially result in the receipt of a prohibited in-kind contribution.

1 found that the foreign national owners of a venue did not make or facilitate a contribution to a
2 political committee by allowing the committee to rent the venue for a fundraising event.³⁶ The
3 venue at issue was rented out for events in the ordinary course of business, and the owners
4 charged the committee the usual and normal amount for the service.³⁷ The Commission noted
5 that there was no available information to suggest — and the foreign nationals and political
6 committee expressly denied — that the foreign nationals had any “decision-making role in the
7 event.”³⁸

8 The Commission has found that not all participation by foreign nationals in the election-
9 related activities of others will violate the Act. In MUR 6959, for example, the Commission
10 found no reason to believe that a foreign national violated 52 U.S.C. § 30121 by performing
11 clerical duties, such as online research and translations, during a one month-long internship with
12 a party committee.³⁹ Similarly, in MURs 5987, 5995, and 6015, the Commission found no
13 reason to believe that a foreign national violated 52 U.S.C. § 30121 by volunteering his services
14 to perform at a campaign fundraiser and agreeing to let the political committee use his name and
15 likeness in its emails promoting the concert and soliciting support, where the record did not
16 indicate that the foreign national had been involved in the committee’s decision-making process

³⁶ Factual and Legal Analysis at 4-6, MUR 5998 (Lord Jacob Rothschild).

³⁷ *Id.*

³⁸ *Id.* at 5.

³⁹ Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (noting that the available information, which was based on two press reports that did not detail the foreign national’s activities, did not indicate that the foreign national participated in any political committee’s decision-making process). The Commission also found that a \$3,000 stipend that the foreign national received from third parties resulted in an in-kind contribution from the third parties to the committee, but the value of the foreign national volunteer’s services to the committee was not a contribution. *Id.* at 4-5 (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)).

1 in connection with the making of contributions, donations, expenditures, or disbursements.⁴⁰ By
2 contrast, the Commission has consistently found a violation of the foreign national prohibition
3 where foreign national officers or directors of a U.S. company participated in the company's
4 decisions to make contributions or in the management of its separate segregated fund.⁴¹

5 2. There is Reason to Believe that Nix Violated 52 U.S.C. § 30121 and
6 11 C.F.R. § 110.20(i) When He and Cambridge's Foreign National
7 Employees Directly or Indirectly Participated in the Management and a
8 Decision-Making Process Regarding the Election-Related Activities of
9 Several Political Committees During the 2014 Election Cycle

10 Cambridge's usual and normal business involved providing data analytics and message
11 targeting services, and there is no specific information suggesting that Cambridge charged any
12 committee less than its usual and normal rate for such services. Even if Cambridge, which was
13 organized under the laws of Delaware and therefore appears to be a domestic company, was,
14 *arguendo*, a foreign company, it could provide services to a political committee as a commercial
15 vendor without thereby making a contribution to that committee, but foreign nationals may not
16 directly or indirectly participate in any committee's management or decision-making process in
17 connection with its election-related spending.

18 Wylie, a Cambridge foreign national employee, appears to have participated in the
19 decision-making processes of Cambridge's clients with respect to their election-related activities.

⁴⁰ Factual and Legal Analysis at 6-9, MURs 5987, 5995, and 6015 (Sir Elton John); *see also* Factual and Legal Analysis at 5, MUR 5998 (Lord Jacob Rothschild); Advisory Op. 2004-26 (Weller).

⁴¹ *See, e.g.*, Conciliation Agreement, MUR 6093 (Transurban Grp.) (U.S. subsidiary violated Act by making contributions after its foreign parent company's board of directors directly participated in determining whether to continue political contributions policy of its U.S. subsidiaries); Conciliation Agreement, MUR 6184 (Skyway Concession Company, LLC) (U.S. company violated Act by making contributions after its foreign national CEO participated in company's election-related activities by vetting campaign solicitations or deciding which nonfederal committees would receive company contributions, authorizing release of company funds to make contributions, and signing contribution checks); Conciliation Agreement, MUR 7122 (American Pacific International Capital, Inc. ("APIC")) (U.S. corporation owned by foreign company violated Act by making contribution after its board of directors, which included foreign nationals, approved proposal by U.S. citizen corporate officer to contribute).

1 Wylie reportedly admits that he “worked on all of the company’s U.S. political campaigns in
2 2014,”⁴² and that he was personally part of “multiple conference calls in 2014” with Nix and
3 Stephen K. Bannon, a Cambridge board member, in which “strategic campaign matters were
4 discussed.”⁴³ During this period of time, Cambridge not only provided political committees with
5 communications and targeting advice, *i.e.*, advice about how to effectively craft tailored
6 communications and target them to receptive voters in order to maximize the messages’ impact,
7 but “directed” the committees in their messaging.⁴⁴

8 According to Wylie and internal Cambridge documents, he and other foreign nationals
9 were embedded in political committees and were “instructing campaigns on which messages go
10 where and to who.”⁴⁵ By providing strategic advice to committees on both the content and target
11 audience for their campaign communications, these foreign nationals may have helped shape
12 political committees’ election-related spending decisions. Moreover, at least some of these
13 foreign nationals reportedly “were still answering ultimately to [Alexander] Nix” while working
14 for U.S. political committees.⁴⁶

15 The available information supports a finding that Cambridge, through its foreign national
16 employees, officers, and directors, including Nix, may have participated in the decision-making
17 processes with regard to election-related activities of the Robinson Committee. In contrast to the
18 circumstances presented in Advisory Opinion 2004-26, it appears that foreign nationals were

⁴² Schechter Article.

⁴³ Timberg Article.

⁴⁴ *See, e.g.*, 2014 Report at 16-17 (describing Cambridge’s successful “direction” of the Bolton PAC).

⁴⁵ Schechter Article.

⁴⁶ MUR 7350 Compl. at ¶ 23 (citing Guardian Article).

1 “managing or participating in the decisions” of the Robinson Committee, because Cambridge,
2 which employed mostly foreigners in 2014, assumed “comprehensive” responsibilities for the
3 Robinson Committee during the 2014 election cycle, including managing basic campaign
4 functions and providing strategic advice.⁴⁷ Robinson acknowledges that Cambridge, through its
5 foreign national employees, was at least indirectly participating in a decision-making process in
6 connection with the committee’s election-related spending.⁴⁸ Even if, as Robinson contends, the
7 Robinson Committee’s staff made all final decisions regarding the committee’s management and
8 electoral strategy, the record indicates that Nix and other Cambridge foreign national officers or
9 employees, participated, either directly or indirectly, in the Robinson Committee’s management
10 or decision-making process in connection with its expenditures.

11 The available information also supports a finding that Cambridge, through its foreign
12 national employees, officers, or directors, including Nix, may have participated, directly or
13 indirectly, in the management or decision-making processes in connection with election-related
14 spending of the Tillis Committee, Bolton PAC, and NCRP. Cambridge reportedly provided
15 “polling, focus groups and message development” services for these committees during Thom
16 Tillis’s 2014 campaign for the U.S. Senate in North Carolina.⁴⁹ Wylie reportedly claims to have
17 worked on all of Cambridge’s political campaigns in 2014, including Thom Tillis’s campaign.⁵⁰
18 Wylie reportedly admits that “his largely foreign team” of Cambridge employees instructed the
19 Tillis campaign on its messaging by crafting and targeting the messaging, and that “his” team

⁴⁷ Advisory Op. 2004-26 at 3; 2014 Report at 1.

⁴⁸ See Arthur Robinson Resp. at 1-2.

⁴⁹ NYT March 17 Article.

⁵⁰ Schechter Article.

1 instructed campaigns on “which messages go where and to who.”⁵¹
2 Wylie reportedly claims that “three or four full-time [Cambridge] staffers embedded in
3 Tillis’s campaign on the ground in Raleigh [and all] of them were foreign nationals.”⁵² Another
4 former Cambridge employee also claims that most of the Tillis campaign’s messaging team was
5 composed of foreign nationals.⁵³ These assertions indicate that Wylie may have worked not only
6 with the Tillis Committee, but also the NCRP and Bolton PAC in support of Tillis’s campaign
7 for the U.S. Senate. Wylie and other Cambridge employees may also have been embedded with
8 the NCRP to provide targeting advice used to create and distribute communications supporting
9 Tillis’s campaign.⁵⁴ Wylie and another former Cambridge employee also contend that
10 Cambridge helped develop data models and message concepts for the Bolton PAC’s
11 communications supporting Tillis during the 2014 election.⁵⁵

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* Both the Tillis Committee and NCRP rejected Wylie’s claim that Cambridge employees were embedded with Tillis’s authorized committee, asserting instead that Cambridge employees were embedded with the NCRP. *Id.*; see Timberg Article (“Cambridge Analytica documents show it advised a congressional candidate in Oregon, state legislative candidates in Colorado and, on behalf of the North Carolina Republican Party, the winning campaign for Sen. Thom Tillis.”).

⁵⁵ NYT March 23 Article.

1 Nix asserts that the available information is insufficient to support the allegations and that
2 he did not personally violate the law or authorize anyone else to violate the law.⁵⁶ He also attests
3 that Cambridge had a policy that foreign nationals not participate in providing strategic advice or
4 election-related decision-making, under which all work done by foreign nationals was supervised
5 by U.S. citizens with decision-making authority.⁵⁷

6 The key issue is not whether Nix, or any other foreign national had final decision-making
7 authority or final say regarding any analysis, but whether they participated, directly or indirectly,
8 in a Cambridge client’s management or decision-making process in connection with its
9 “election-related activities, such as decisions concerning the making of contributions, donations,
10 expenditures, or disbursements . . . or decisions concerning the administration of a political
11 committee.”⁵⁸ Despite Nix’s assertions, the information in the record indicates that while Nix
12 served as the chief executive and day-to-day manager of Cambridge, he and other foreign
13 national employees of Cambridge may have done both by participating in committees’ decision-
14 making in connection with their communications strategy and expenditures.

15 Based on the available information regarding Cambridge’s conduct, through which
16 foreign nationals participated in Cambridge client committees’ management or decision-making
17 processes in connection with their election-related spending, and Nix’s personal involvement in
18 that conduct while serving as Cambridge’s chief executive and day-to-day manager, the
19 Commission finds reason to believe that Nix violated 52 U.S.C. § 30121 and 11 C.F.R.
20 § 110.20(i).

⁵⁶ Nix Resp. at 1-8.

⁵⁷ *Id.*, Ex. 1 ¶¶ 29-30.

⁵⁸ 11 C.F.R. § 110.20(i).