BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Cambridge Analytica LLC	)	
SCL Group LTD	)	
Alexander Nix	)	
Mark Turnbull	)	
Christopher Wylie	)	
Donald J. Trump	)	
Donald J. Trump for President, Inc., and Bradley T. Crate in his official capacity as treasurer	)	
Make America Number 1 and Jacquelyn James in her official capacity as treasurer	)	
Cruz for President and Bradley S. Knippa in his official capacity as treasurer	)	
Thom Tillis Committee and Collin McMichael in his official capacity as treasurer	)	MURs 7350, 7351, 7357, and 7382
Art Robinson for Congress and Art Robinson in his official capacity as treasurer	)	
John Bolton Super PAC and Cabell Hobbs in his official capacity as treasurer	)	
North Carolina Republican Party and Jason Lemons in his official capacity as treasurer	)	
Stephen K. Bannon	)	
Bradley J. Parscale	)	
Rebekah Mercer	)	
Nigel Oaks	)	
Alexander Tayler	)	
Tim Glister	)	
Jared Kushner	)	

SECOND GENERAL COUNSEL'S REPORT

I. ACTION RECOMMENDED

Take no further action regarding the alleged violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations in connection with the

provision of services by Cambridge Analytica LLC ("Cambridge") to political committees during the 2014 and 2016 election cycles, and close the file.

II. INTRODUCTION

These matters arose from four complaints alleging violations of the Act and Commission regulations by Cambridge, its foreign parent company, SCL Group LTD ("SCL"), several committees that received services from Cambridge during the 2014 and 2016 election cycles, and a number of individuals involved with Cambridge's operations, including its Chief Executive Officer (CEO) Alexander Nix and former employee Christopher Wylie. Three of the complaints alleged that Cambridge and SCL permitted foreign nationals to directly or indirectly participate in the management or decision-making processes of political committees with regard to their federal election activities,[1] while two of the complaints alleged that during the 2014 election cycle, an independent-expenditure-only political committee ("IEOPC"), the John Bolton Super PAC and Cabell Hobbs in his official capacity as treasurer ("Bolton PAC"), made communications that were coordinated with an authorized campaign committee and a state party committee — the Thom Tillis Committee and Collin McMichael in his official capacity as treasurer ("Tillis Committee") and the North Carolina Republican Party and Jason Lemons in his official capacity as treasurer ("NCRP"), respectively — using Cambridge as a "common vendor."[2]

The Commission found reason to believe that Cambridge, Nix, Wylie, the Bolton PAC, the Tillis Committee, the NCRP, and Art Robinson for Congress and Art Robinson in his official

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

[2] *See* MUR 7357 Compl. (Mar. 29, 2018); MUR 7382 Compl. The Commission took no action as to the coordinated communication allegations.

capacity as treasurer (the "Robinson Committee") violated 52 U.S.C. § 30121 and 11 C.F.R. § 110.20(i), which prohibit foreign nationals from directly or indirectly participating in the management or decision-making processes of political committees with regard to their federal election activities.[3] In accordance with those findings, this Office commenced an investigation.

Having concluded the investigation, the record before the Commission does not sufficiently establish the extent of the potential violations to support further action, and the investigation is unlikely to uncover additional information without the expenditure of significant additional resources. Moreover, the violations appear to have expired under the five-year statute of limitations.[4] We therefore recommend that the Commission take no further action and close the file in these matters.

III. SUMMARY OF INVESTIGATION

During the investigation of these matters, we pursued a number of avenues to obtain additional information, including voluntary requests for information, subpoenas, and a request for law enforcement cooperation from a foreign government.

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[3] Certification, MURs 7350, 7351, 7357, and 7382 (July 24, 2019) (finding reason to believe as to Cambridge, Wylie, Bolton PAC, Robinson Comm., Tillis Comm., NCRP); Certification, MURs 7350, 7351, and 7382 (Aug. 20, 2019) (finding reason to believe as to Nix). The Commission took no action as to the remaining respondents.

[4] *See* 28 U.S.C. § 2462. The exact status of the statute of limitations in these matters is unclear because, as we have explained previously, the alleged violations would have accrued on the dates that a political committee made an expenditure based on a decision-making process in which a foreign national participated, and we do not have sufficient information to establish whether or when any committee made such an expenditure. Nevertheless, it appears that the limitations period, including all applicable tolling, has lapsed even assuming the latest possible date that any such expenditure could have been made.

A. Voluntary Requests for Information

In response to the Commission's reason-to-believe findings and our voluntary requests for additional information, we received submissions from five respondents: The Robinson Committee, Bolton PAC, Tillis Committee, NCRP, and Nix.

We also sent non-respondent witness letters seeking information voluntarily from two former Cambridge employees and a company that Cambridge reportedly contracted for services: Brittany Kaiser, Kieran Ward, and AggregateIQ, a Canadian software company. Kaiser, Cambridge's former head of business development, had reportedly testified regarding Cambridge's business development practices — including its "pitch" to potential clients — before Congress and the U.K. House of Commons, suggesting that she could provide information about foreign nationals participating in Cambridge's efforts to cultivate U.S. political committees as clients. Ward appeared to be a senior-level executive at both SCL and Cambridge — he held the titles of "Director of Communications" at SCL and "Global Creative Director" at Cambridge — with an apparent focus on the companies' communications content, which suggested that he might be a useful source of information about foreign nationals' work on or participation in the creation or targeting of Cambridge/SCL content for U.S. political committees.

AggregateIQ had reportedly worked for Cambridge: In their respective appearances before the U.K. House of Commons, both Cambridge's CEO, Nix, and Kaiser testified that AggregateIQ had worked in connection with Cambridge's activities for U.S. political committees. We therefore viewed the company as a potential source of information about the work they did for Cambridge or its U.S. clients.

However, we did not receive any response to these inquiries.

B. Christopher Wylie

After the Commission, on July 24, 2019, found reason to believe that Wylie violated the Act and Commission regulations, we sent Wylie a notification of the Commission's findings as well as a voluntary request for additional information. We received no response from Wylie, and it was unclear whether he received the notification; we did not have a current mailing or email address for him, and he was not represented by counsel before the Commission.[5] Based on articles reporting that Wylie had previously testified before the U.S. House of Representatives Permanent Select Committee on Intelligence, we tried to contact Wylie through the attorney that represented him in connection with that testimony. However, that attorney, who was apparently based in the United Kingdom, did not respond to any of our repeated attempts to contact her.

Shortly before the Commission lost a quorum on August 30, 2019, the Commission issued a subpoena for Wylie to provide documents and information, and to make himself available for an interview.[6] Because we lacked an address for Wylie, we sent the subpoena to him through both his reported employer at the time, multinational clothing retailer Hennes & Mauritz (H&M),[7] as well as through Verbena Ltd., a London-based company that Wylie had reportedly formed to hold the copyright to a forthcoming book he wrote about his time working

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[5] The notification was sent to an address in Victoria, British Columbia, Canada, which we believed to be Wylie's home address; numerous reports indicate that Wylie is a Canadian national. *See* Letter from Chair Ellen L. Weintraub, FEC, to Christopher Wylie (Aug. 1, 2019). We later received a call from the recipient of the notification letter, who told us that although his name was Christopher Wylie, he was not the Christopher Wylie that had previously worked for Cambridge.

[6] The Commission did not have a quorum from August 30, 2019, to June 5, 2020, and again from July 3, 2020, through December 2020, precluding the issuance of additional subpoenas during those periods.

[7] *See* Leah Harper, *Whistleblower Christopher Wylie Joins Fashion Retailer H&M*, THE GUARDIAN (Jan. 31, 2019), https://www.theguardian.com/fashion/2019/jan/31/whistleblower-christopher-wylie-joins-fashion-retailer-h-m ("Christopher Wylie, the Canadian whistleblower who last year exposed the misuse of data by the political consulting firm Cambridge Analytica, has been hired by the Swedish fashion retailer H&M. The business confirmed that it had signed a consultancy contract with Wylie, who will take the role of research director.").

at Cambridge.[8] However, Wylie never responded to the Commission's subpoena, and it is unclear whether he received it.

C. MLAT Request

At the time of the Commission's reason-to-believe finding, Cambridge had already declared bankruptcy and had effectively been dissolved; it apparently had no office, managers, or employees. Because Cambridge did not designate counsel before the Commission, the notification of the Commission's reason-to-believe findings was sent to Cambridge's registered agent and its former in-house counsel, either of whom appear to have forwarded the notification to Cambridge's U.S. bankruptcy counsel. Cambridge's bankruptcy counsel represented that virtually all of Cambridge's records, both physical and electronic, were in the United Kingdom (U.K.), where its parent company, SCL, had been located, and that those records had been seized by a U.K. regulatory agency in connection with an investigation of SCL.

SCL was also in "administration" (*i.e.*, liquidation or bankruptcy) in the U.K., and, according to news reports, its records had been seized by the U.K. Information Commissioner's Office ("ICO").[9] Accordingly, in September 2019, following notification to the Commission, we began coordinating with the U.S. Department of Justice ("DOJ") to prepare a formal request for cooperation under the U.S.-U.K. Mutual Legal Assistance Treaty ("MLAT") to the U.K. Central Authority ("UKCA"), the U.K. government's designated representative under the MLAT;[10]

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[8] *See* "Verbena Limited," Companies House (U.K.), https://find-and-update.company-information.service.gov.uk/company/12108806/persons-with-significant-control (listing Wylie as owner of 75% or more shares); *see also* Christopher Wylie, MINDF*CK: CAMBRIDGE ANALYTICA AND THE PLOT TO BREAK AMERICA (1st ed., Oct. 8, 2019). A cursory review of Wylie's book did not provide information useful to our investigation.

[9] *See* Hannah Summers and Nicola Slawson, *Investigators Complete Seven-Hour Cambridge Analytica HQ Search*, THE GUARDIAN (Mar. 24, 2018), https://www.theguardian.com/news/2018/mar/23/judge-grants-search-warrant-for-cambridge-analyticas-offices.

[10] *See* Treaty Between the United States of America and the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters, Art. 1 (Jan. 6, 1994), https://www.congress.gov/104/cdoc/

following an updated notification to the Commission, we requested that DOJ submit the request on our behalf to the UKCA on December 10, 2019.[11] Our submission described the nature of the investigation and the alleged violations, and requested that the UKCA "provide copies of all physical or electronic records, documents, or communications for the period between January 1, 2013, and December 31, 2016, relating to Cambridge Analytica LLC or SCL Group LTD" and regarding "services provided to U.S. political committees" during that period, as well as any "policies, procedures, trainings, or guidance relating to the provision of services to any U.S. political committee by non-U.S. nationals."[12]

After the UKCA preliminarily approved our request and referred it to the ICO, the ICO informed us that it had a massive amount of Cambridge/SCL data (around 400 terabytes) that it had seized, as well as a trove of Cambridge/SCL emails that SCL's U.K. liquidation counsel had produced voluntarily. However, after conducting a review of the legal authorities governing its possession of Cambridge/SCL records, the ICO informed us, in March 2020, that it could not share either the data that it had seized from SCL's offices or the emails that SCL's liquidators had provided to it voluntarily. As such, it appeared the ICO could not assist us further.

The UKCA then informed us it would transfer the MLAT request to a local police office to seek a court order compelling the SCL's liquidators to provide us with the relevant emails and data, while also suggesting that we contact the liquidators directly to see if they would consent to provide the materials voluntarily (as they had done for the ICO to assist in its investigation). As

tdoc2/CDOC-104tdoc2.pdf ("The Parties shall provide mutual assistance, in accordance with the provisions of this Treaty . . . . Assistance shall include: . . . (2) providing documents, records, and evidence.").

[11] Request for Assistance in the Matter of Cambridge Analytica LLC (Dec. 4, 2019) ("MLAT Request").

[12] MLAT Request at 12-13.

such, in April 2020, we contacted the firm representing SCL in its liquidation proceedings, but received no response to repeated inquiries.

In June 2020, the UKCA informed us that the local police were asking SCL's liquidators to voluntarily provide the requested SCL documents, and would otherwise seek a court order compelling the production of those documents. However, we were told that obtaining a court order would require a showing of "dual criminality," *i.e.*, that the alleged conduct we were investigating would also constitute a crime under U.K. law. After discussing that issue with the UKCA, we did not believe that we could successfully make such a showing, and our DOJ contacts shared our skepticism, thus effectively foreclosing the option of compelling SCL's liquidators to cooperate with our request. By November 2020, SCL's liquidators had also informed the UKCA that without a court order, they would not voluntarily produce the requested materials to aid in our investigation.

Although the UKCA was in the process of seeking a second opinion on the "dual criminality" issue, in light of the apparent expiration of the statute of limitations and the substantial additional investment of time and resources needed to obtain the Cambridge records through the UK authorities, we determined to end the investigation. We therefore requested that DOJ withdraw the MLAT request on March 10, 2021.

IV. LEGAL ANALYSIS

A. The Foreign National Prohibition

The Act and Commission regulations prohibit any "foreign national" from directly or indirectly making a contribution or donation of money or other thing of value, or an expenditure,

independent expenditure, or disbursement, in connection with a federal, state, or local election.[13] Moreover, the Act prohibits any person from soliciting, accepting, or receiving any such contribution or donation from a foreign national.[14] The Act's definition of "foreign national" includes an individual who is not a citizen or national of the United States and who is not lawfully admitted for permanent residence, as well as a "foreign principal" as defined at 22 U.S.C. § 611(b), which, in turn, includes a "partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country."[15] Commission regulations implementing the Act's foreign national prohibition provide:

> A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, political committee, or political organization with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements . . . or decisions concerning the administration of a political committee.[16]

The Commission has explained that this provision also bars foreign nationals from "involvement in the management of a political committee."[17]

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[13] 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 and independent expenditures on the ground that the government "has a compelling interest for purposes of First Amendment analysis in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process." *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff'd* 132 S. Ct. 1087 (2012); *see United States v. Singh*, 924 F.3d 1030, 1041–44 (9th Cir. 2019).

[14] 52 U.S.C. § 30121(a)(2). The Commission's implementing regulation at 11 C.F.R. § 110.20(g) more specifically provides that "no person shall *knowingly* solicit" a foreign national contribution. 11 C.F.R. § 110.20(g). "[K]nowingly" is defined to include "actual knowledge" that the target of the solicitation is a foreign national. *See* 11 C.F.R. § 110.20(a)(4) (definition of knowingly).

[15] 52 U.S.C. § 30121(b); 22 U.S.C. § 611(b)(3); *see also* 11 C.F.R. § 110.20(a)(3).

[16] 11 C.F.R. § 110.20(i).

[17] 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,

In light of these provisions, Commission regulations permit any person or company — foreign or domestic — to provide goods or services to a political committee, without making a contribution, if that person or company does so as a "commercial vendor," *i.e.*, in the ordinary course of business, and at the usual and normal charge, as long as foreign nationals do not directly or indirectly participate in any committee's management or decision-making process in connection with its election-related activities.[18] While not all participation by foreign nationals in the election-related activities of others will violate the Act,[19] the Commission has consistently found a violation of the foreign national prohibition where foreign national officers or directors of a U.S. company participated in the company's decisions to make contributions or in the management of its separate segregated fund.[20]

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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").

[18] 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).

[19] *See* Factual and Legal Analysis at 4-5, MUR 6959 (Cindy Nava) (citing 52 U.S.C. § 30101(8)(A)(ii); 11 C.F.R. § 100.54; Advisory Op. 1982-04 (Apodaca)); Factual and Legal Analysis at 6-9, MURs 5987, 5995, and 6015 (Sir Elton John); Advisory Op. 2004-26 at 3 (Weller).

[20] *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.) (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).

B. The Factual Record Does Not Sufficiently Establish the Violations to Take Further Action

Based on the information before the Commission prior to initiating an investigation in these matters, the Commission found reason to believe that Cambridge, through its foreign national employees, including Wylie, may have participated in the decision-making processes with regard to election-related activities of one or more U.S. political committees.[21] The investigation aimed to uncover additional information regarding "the parameters of Cambridge's participation in the management or decision-making processes of the Respondent political committees and whether it employed foreign nationals to provide those services."[22]

As explained below, however, in light of the overall post-investigatory record, including respondents' submissions contesting the Commission's findings, and the expiration of the statute of limitations as to the activity upon which the Commission found reason to believe, we do not recommend that the Commission expend the additional resources necessary to establish the extent of the respondents' violations.

1. Cambridge Analytica

Cambridge did not respond to the Commission's reason to believe findings because, as noted above, it was by that time in bankruptcy and had been effectively dissolved. Moreover, its records were located in a foreign country, in the custody and control of a foreign government. As discussed above, we therefore attempted, through the MLAT process, to acquire Cambridge's communications and records from its foreign parent company, SCL, but were ultimately unable to obtain those documents. We were also unable to contact former Cambridge employees,

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[21] *See* Factual and Legal Analysis at 11-12, MURs 7350, 7351, and 7382 (Cambridge Analytica LLC).

[22] First Gen. Counsel's Report at 39, MURs 7350, 7351, 7357, and 7382 (Cambridge Analytica LLC, *et al.*).

including Wylie, who might have been able to provide more insight into Cambridge's activities during the relevant period.

As such, the investigation did not uncover additional information to substantiate the extent of Cambridge's potential violations. Lacking this detailed information, and given the expiration of the statute of limitations in connection with any services foreign nationals may have provided through Cambridge, the overall record thus does not appear to merit the additional Commission resources necessary to take any further action as to Cambridge.

2. Christopher Wylie

Wylie did not respond to the Commission's reason to believe finding, and he did not respond to either an informal request for information or the Commission's duly-authorized subpoena. Moreover, we are unsure whether he received any of these documents, despite our best efforts to contact him: Because Wylie never retained counsel before the Commission and apparently lives outside the U.S., and we have no email or mailing address — or other contact information, such as a phone number — through which to reach him, we could not confirm whether he received any of the Commission's correspondence in these matters.

As such, in conjunction with the lack of additional information regarding Cambridge's activities, the investigation did not uncover additional information to substantiate the extent of Wylie's violations of the Act. While the information available prior to the investigation raised an inference that Wylie, a foreign national, may have participated in the decision-making process with regard to election-related spending of the U.S. political committees that hired Cambridge,

particularly during the 2014 election cycle,[23] the overall record does not appear sufficiently detailed as to the extent of Wylie's participation to take further action.

3. Alexander Nix

Nix submitted a detailed response to the Commission's reason to believe finding on November 6, 2019, raising several points to contest that finding. In addition to raising arguments against the reliability of the pre-investigatory record, Nix's response primarily contends that Nix did not "personally engage" in the alleged conduct that violated the Act, *i.e.*, the participation by foreign nationals working for Cambridge in a committee's management or decision-making process with regard to its election-related activities.[24] The response also argues that the Commission's finding conflates conduct by foreign nationals that merely *influences* a committee's decision-making process, such as providing research or data services at a fair market price, with conduct that amounts to *participation* in a committee's decision-making process with regard to its election-related activities.[25]

The pre-investigatory record indicated that "while Nix served as the chief executive and day-to-day manager of Cambridge, he and other foreign national employees of Cambridge may have . . . participat[ed] in committees' decision-making in connection with their communications strategy and expenditures."[26] That was, in fact, the basis on which the Commission found reason

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[23] *See* Factual and Legal Analysis at 3, 11-13, MURs 7350 and 7351 (Christopher Wylie).

[24] Post-RTB Resp. of Alexander Nix at 2-3 (Nov. 6, 2019).

[25] *Id.* at 3. Nix's response also stated: "[S]ubsequent to the transmission of this letter, this [law] firm will no longer represent Mr. Nix before the Commission in connection with MURs 7350, 7351 or 7382, and hence is not authorized to accept service of correspondence or compulsory process on his behalf." *Id.* at 4.

[26] Factual and Legal Analysis at 14, MURs 7350, 7351, and 7382 (Alexander Nix).

to believe Nix violated the Act.[27] As such, the argument that Nix did not personally engage in such participation is inapposite. Further, the response's legal argument is likewise unavailing; as the Commission explained, a foreign national may, as a commercial vendor, provide services that *influence* a political committee's activities, "as long as foreign nationals do not directly or indirectly participate in any committee's management or decision-making process in connection with its election-related activities."[28] As such, the Commission's reason to believe finding drew a distinction between permitted and prohibited conduct by an entity, like Cambridge, that employs foreign nationals to provide services to a political committee.

Nevertheless, despite the weaknesses in the Nix's arguments, given the lack of additional specific information regarding Cambridge's activities and Nix's role in managing or directing those activities, the overall record appears insufficient to substantiate the extent of Nix's violations.

4. The Robinson Committee

The Robinson Committee filed a response to the Commission's reason to believe finding on August 13, 2019, asserting that the candidate, Arthur Robinson, "personally made all decisions in the 2014 campaign" and "personally directed it in its entirety."[29] While the response acknowledges that the Robinson Committee "did receive advice from people . . . employed by Cambridge Analytica," and that it did "not know whether or not we received advice directly or

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27 *Id.*

28 Factual and Legal Analysis at 8-9, MURs 7350, 7351, and 7382 (Alexander Nix).

29 Post-RTB Resp. of Robinson Comm. at 1 (Aug. 13, 2019).

indirectly from a non-U.S. citizen," it also contends that "no individual case of a possible violation . . . is cited" in the Commission's reason to believe finding.[30]

Viewed in light of the pre-investigatory information indicating that Cambridge employed many foreign nationals in providing services to U.S. committees during the 2014 election cycle, the Robinson Committee's acknowledgement that it received advice from Cambridge during the 2014 election suggests that a foreign national may have thereby participated in a decision-making process in connection with the Robinson Committee's electoral activities.[31] Nevertheless, without more definitive information regarding the nature of the advice given or specific instances where a foreign national managed, administered, or "direct[ed], dictate[d], control[led], or directly or indirectly participate[d] in the decision-making process" of the Robinson Committee's electoral activities, there is insufficient information to establish the full extent of these violations.[32]

5. The Bolton PAC, Tillis Committee, and NCRP

The Bolton PAC filed a response, along with a sworn declaration from its director, denying the allegations and contesting the Commission's finding, principally arguing that Cambridge (which it refers to as "SCL USA") only provided "data analytics" services as a paid commercial vendor and "did not direct, dictate, control, or directly or indirectly participate in the decision-making process of the John Bolton Super PAC with respect to any expenditures it

30 *Id.*; *see also* Arthur Robinson Resp. at 1-2 (Apr. 18, 2018) (acknowledging that the Robinson Committee "listened to advice from many individuals and organizations, including Cambridge Analytica").

31 *See* Factual and Legal Analysis at 4-5, 9-10, MUR 7351 (Art Robinson for Congress).

32 11 C.F.R. § 110.20(i).

made."[33] The response specifically denies that Cambridge provided "lists of voters to target" or "prepared scripts or contents for use" by the Bolton PAC.[34]

The Tillis Committee likewise submitted a response, attaching multiple sworn affidavits, denying the allegations and contending that "Cambridge Analytica did NOT participate in the Tillis Committee's management of decision-making process in connection with its election related spending" and "further did NOT provide 'polling, focus groups and message development' services for the Tillis Campaign in 2014."[35] The NCRP also submitted a response denying the allegations and incorporating large portions of the Tillis Committee's response by reference.[36]

Viewed in light of these responses, which attach sworn affidavits specifically denying the factual basis for the alleged violations, as well as the lack of additional information regarding whether, and in precisely what capacities, Cambridge may have employed foreign nationals to provide services for these committees, there is insufficient information to substantiate the extent of these respondents' violations.

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[33] Post-RTB Resp. of Bolton PAC at 4 (Oct. 15, 2019); *see id.*, Ex. A ¶¶ 27-28, 31 (Decl. of Sarah Tinsley) ("Cambridge Analytica provided data analytics to one of the John Bolton Super PAC's vendors, Campaign Solutions, which Campaign Solutions analyzed to see how the messages they crafted might resonate with certain generic personality types. Cambridge Analytica provided these data analytics in the ordinary course of business and at the usual and normal charge. . . Cambridge Analytica and its employees never directed, dictated, controlled, or directly or indirectly participated, in any management or decision-making process in connection with the John Bolton Super PAC's election-related activities.").

[34] *Id.* at 3.

[35] Post-RTB Resp. of Tillis Comm. at 3 (Oct. 16, 2019) (emphases in original); *see id.*, Ex. K ¶ 5, 13, 26 (Aff. of Paul Shumaker) ("The Tillis Campaign retained Cambridge Analytica LLC . . . to serve as the microtargeting data vendor for the Tillis Campaign in 2014. . . Cambridge Analytica did not develop 'individually targeted messages' for the Campaign, nor did it direct the Campaign as to where to target messages or spend resources. . . Cambridge Analytica had nothing to do with decisions about expenditures, budgeting, strategy or any election-related spending by the Tillis campaign.").

[36] Post-RTB Resp. of NCRP (Oct. 16, 2019).

C. The Commission Should Dismiss the Remaining Allegations on Which No Action was Previously Taken

The Commission previously took no action as to three political committees that hired Cambridge during the 2016 election cycle, which allegedly resulted in foreign nationals participating in the management or decision-making processes of these committees with regard to their election-related activity: Cruz for President and Bradley S. Knippa in his official capacity as treasurer (the "Cruz Committee"); Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer (the "Trump Committee"); and Make America Number 1 and Jacquelyn James in her official capacity as treasurer ("Make America Number 1").[37] The Commission also previously took no action as to the allegation that during the 2014 election cycle, the Bolton PAC made coordinated communications with the Tillis Committee and NCRP using Cambridge as a "common vendor."[38] Finally, the Commission previously took no action as to several individual respondents: Donald J. Trump, Mark Turnbull, Stephen K. Bannon, Bradley J. Parscale, Rebekah Mercer, Nigel Oaks, Alexander Tayler, Tim Glister, and Jared Kushner.

The First General Counsel's Report recommended that the Commission find reason to believe as to the 2016 committees — the Cruz Committee, the Trump Committee, and Make America Number 1 — as well as Mark Turnbull, Cambridge's Chief Operating Officer (COO), and recommended finding reason to believe as to the allegation that the Bolton PAC made

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[37] *See* MUR 7350 Compl.; MUR 7351 Compl.

[38] *See* MUR 7357 Compl.; MUR 7382 Compl.

coordinated communications.[39] The report also recommended taking no action at that time as to the remaining respondents, pending an investigation.[40]

Our investigation of the allegations for which the Commission found reason to believe did not provide additional relevant information for the Commission's further consideration of the allegations on which it previously took no action. Based on the passage of time and the apparent lapsing of the statute of limitations, further consideration of these allegations would not be a prudent use of the Commission's limited resources. Accordingly, we recommend that the Commission exercise its prosecutorial discretion and dismiss these allegations.[41]

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As the foregoing discussion reflects, we had significant difficulty contacting witnesses and respondents in these matters, many of whom are foreign nationals based outside the U.S. We were also unable to obtain the communications and records of the primary respondent, Cambridge, which were located in the United Kingdom. Our investigation was also hampered by the lack of a quorum on the Commission for much of the investigation period. Therefore, the current record is more developed but similar to the record on which the Commission found reason to believe these violations occurred. Viewed in light of the apparent lapsing of the statute of limitations, and the fact that the investigation is unlikely to uncover additional information without the expenditure of significant additional resources, we recommend that the Commission take no further action and close the file as to all Respondents in these matters.

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[39] *See* First Gen. Counsel's Report at 40-41, MURs 7350, 7351, 7357, and 7382 (Cambridge Analytica LLC, *et al.*). The Commission voted on a motion to approve these recommendations on April 11, 2019, which failed 2-0, with two abstentions. Certification, MURs 7350, 7351, 7357, and 7382 (Apr. 11, 2019).

[40] First Gen. Counsel's Report at 40-41, MURs 7350, 7351, 7357, and 7382 (Cambridge Analytica LLC, *et al.*).

[41] *See Heckler v. Chaney,* 470 U.S. 821, 831 (1985).

V. RECOMMENDATIONS

MURs 7350, 7351, and 7382

1. Take no further action as to the allegations regarding Cambridge Analytica LLC; Alexander Nix; 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; the North Carolina Republican Party and Jason Lemons in his official capacity as treasurer; and Art Robinson for Congress and Art Robinson in his official capacity as treasurer, on which the Commission previously found reason to believe;

2. Dismiss the allegations as to Cruz for President and Bradley S. Knippa in his official capacity as treasurer; Donald J. Trump for President, Inc. and Bradley T. Crate in his official capacity as treasurer; Make America Number 1 and Jacquelyn James in her official capacity as treasurer; Donald J. Trump; Mark Turnbull; Stephen K. Bannon; Bradley J. Parscale; Rebekah Mercer; Nigel Oaks; Alexander Tayler; Tim Glister; and Jared Kushner;

MURs 7357 and 7382

3. Dismiss 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;

MURs 7350, 7351, 7357, and 7382

4. Approve the appropriate letters; and

5. Close the file.

Lisa J. Stevenson
Acting General Counsel

August 4, 2021
Date

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