BEFORE THE FEDERAL ELECTION COMMISSION

COOLIDGE REAGAN FOUNDATION,	:	
	:	
Complainant,	:	
	:	
v.	:	**MUR # 7449**
	:	
CHRISTOPHER STEELE, HILLARY FOR AMERICA, DNC SERVICES CORPORATION/DEMOCRATIC NATIONAL COMMITTEE, AND PERKINS COIE, LLP,	:	
	:	
Respondents.	:	
	:	

RESPONSE OF CHRISTOPHER STEELE

INTRODUCTION

The allegations in the Verified Complaint ("Complaint") are replete with false and inaccurate assertions with respect to Respondent Christopher Steele. That being said, even if all of the Complaint's assertions were taken as true, as a matter of law none of the claims against Mr. Steele would come close to stating a violation of the Federal Election Campaign Act, as amended by the Bipartisan Campaign Reform Act of 2002, 52 U.S.C. § 30101 *et seq.* ("the Act" or "the statute"). Indeed, the claims in Counts IV and VI are not only contrary to the plain terms of the Act and prior precedent, they are premised on radically expansive definitions of what constitutes a "contribution," "donation," or "expenditure" under the Act. Were the Commission to adopt the definitions of those terms underlying these claims, there would be profound consequences for U.S. citizens, as well as foreign nationals, and an administrative nightmare with respect to enforcement of the Act.

In essence, the allegations in the Complaint with respect to Mr. Steele reduce to the following:

(1) Mr. Steele was retained and paid to conduct certain opposition research on behalf of the Democratic National Committee ("DNC") and Hillary for America campaign ("HFA"). The Act does not prohibit a campaign from hiring a foreign vendor to perform services at fair market value. The Complaint alleges that Mr. Steele sought information from foreign sources in the course of carrying out this work, but the Complaint does not allege that the foreign sources knew the purpose for which the information was sought, much less knew that it was sought to benefit a candidate. The foreign sources were accordingly being solicited for information and not for a campaign contribution.

(2) The Complaint further alleges that Mr. Steele, acting solely on his own behalf and not at the behest of the DNC or HFA, contacted a reporter and provided the reporter with oral and written information for the purpose of influencing an election. Both the Act and the Constitution protect such communications with the press.

(3) Finally, the Complaint alleges that merely by providing the product of his opposition research to the DNC and HFA, Mr. Steele was participating in the decision-making process of those committees as to which expenditures to make. That claim is in direct conflict with Commission decisions that make clear that what is prohibited by the Act is actual participation in a campaign committee's decision-making process by a foreign national and that providing a service to a committee that may inform that process does not constitute actual participation.

As we now show in more detail, there is no basis for the Commission to find a reason to believe that any of the three claims in the Complaint against Mr. Steele state a violation of the campaign finance laws.

BACKGROUND

1. The Complaint's Allegations with Respect to Mr. Steele

The Complaint is full of inaccuracies about Mr. Steele and his work. But there is no reason for the Commission to launch an investigation into the facts, because the Complaint would have to be dismissed as to Mr. Steele even if all of the allegations were true. The allegations of the Complaint will therefore be treated as true solely for purposes of this response.

According to the Complaint, HFA hired the law firm Perkins Coie for the 2016 presidential election cycle. Compl. ¶ 6. Perkins Coie then hired Fusion GPS "to perform opposition research on [now-]President Trump." Compl. ¶ 8. Fusion GPS, in turn, hired Mr. Steele, a foreign national who is "a former British intelligence officer and director of a London-based firm called Orbis (also known as Orbis Business Intelligence Ltd.) to gather information about any connections between then-candidate Trump and Russia." Compl. ¶ 18. Mr. Steele and Orbis were paid approximately $168,000 for their research. Compl. ¶ 19. The Complaint never suggests that Mr. Steele was paid less than fair market value for his services.

As part of undertaking the research, Mr. Steele asked individuals, including foreign nationals, for "valuable information, evidence, files, documents, records, electronic storage media, or other things" (hereinafter "information") relating to then-candidate Trump. Compl. ¶ 21. Based on the information collected, Mr. Steele assembled a so-called "dossier" of information related to President Trump. Compl. ¶ 22. The Complaint alleges that it "cost a substantial amount of money" to develop the dossier. Compl. ¶ 23. Mr. Steele provided the

dossier to Fusion GPS, which provided it to Perkins Coie, which in turn provided it to HFA and/or the DNC. Compl. ¶ 24.

In the course of completing his research, Mr. Steele became "concern[ed] about" then-candidate Trump's "relationship to Russia." Compl. ¶ 26. Acting on his own initiative, not at the direction of HFA or the DNC, he provided the dossier to his contacts at the FBI in order "to persuade [them] to initiate an investigation of connections between Donald Trump and Russia." Compl. ¶ 25. He also "discussed his research" with, and provided a copy of the dossier to, David Corn, a reporter at the political magazine *Mother Jones*. Compl. ¶ 26. According to the Complaint, Mr. Steele's purpose in communicating with Mr. Corn was to influence the election due to his concerns about candidate Trump's ties to Russia. Compl. ¶ 26. Mr. Corn published an article about Mr. Steele's work on *Mother Jones*'s website on October 31, 2016. Compl. ¶ 27.

Based on these allegations, the Complaint charges that Mr. Steele: (1) solicited contributions or donations from foreign nationals by asking them for things of value, in the form of information regarding Donald Trump, in connection with the 2016 presidential election (Count IV); (2) made prohibited donations or expenditures by giving oral and written information to a reporter (Count VI); and (3) participated in the DNC's and HFA's decision-making regarding expenditures by providing those committees with the information in the dossier (Count VII).

2. Statutory Background

The Act prohibits foreign nationals from making contributions, donations, or expenditures in connection with a Federal, State, or local election. 52 U.S.C. § 30121(a)(1). The

Act also prohibits any person from "solicit[ing], accept[ing], or receiv[ing] a contribution or donation . . . from a foreign national." *Id.* § 30121(a)(2).

For present purposes, the Act defines both "contribution" and "expenditure" as "any gift . . . of money or anything of value made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. §§ 30101(8)(A)(i), 30101(9)(A)(i). "Donation" is defined "as anything of value given to a person, but does not include contributions." 11 C.F.R. §§ 110.20(a)(2), 300.2(e). However, the Commission has explained that "donations" and "contributions" are equivalent for purposes of the foreign national prohibition, although the two terms may have different meanings in other portions of the Act. AO 2014-20 (*Make Your Law PAC*) at 3 n.6.[1]

The regulations accompanying the Act also state that a foreign national may not "direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a . . . political committee . . .with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures[.]" 11 C.F.R. § 110.20(i).

There are several exceptions to the Act's definitions of "contribution," "donation," and "expenditure." As relevant here, and as discussed further below, items or services provided at fair market value are not contributions or expenditures, 11 C.F.R. §§ 100.52(d)(1), 100.111(e)(1); news stories published by news organizations are not contributions or

[1] According to the Commission, Congress added the prohibition on "donation[s]" from foreign nationals to the statute in 2002 to make clear that foreign nationals could not give money or things of value in connection with state or local elections. Before this change, some courts had questioned whether a ban on "contribution[s]" – which are defined only in relation to *federal* elections—would apply when a foreign national gave money in connection with a state or local election. *Contribution Limits and Prohibitions; Final Rule*, 67 Fed. Reg. 69,928, 69,944 (Nov. 19, 2002); *see also United States v. Trie,* 23 F. Supp. 2d 55, 60 (D.D.C. 1998).

expenditures, 52 U.S.C. § 30101(9)(B)(i), 11 C.F.R. § 100.73; and an individual's uncompensated activity on the internet is not a contribution or expenditure, 11 C.F.R. §§ 100.94, 100.155.

ARGUMENT

I. As a Matter of Law, Mr. Steele Did Not Solicit Contributions or Donations by Allegedly Asking Foreign Nationals for Information That Informed the "Dossier" (Count IV)

According to the Complaint, Mr. Steele was hired and paid to conduct research into then-candidate Trump's ties to Russia. As alleged, that task necessarily involved asking knowledgeable people, including Russian nationals, for information. Count IV alleges that Mr. Steele's requests for information from foreign nationals "concerning Donald Trump . . . in connection with the 2016 presidential election" were illegal solicitations of foreign national contributions. *See* Compl. ¶¶ 59-60. However, the plain terms of the statute do not support the idea that a campaign vendor who asks a foreign national for information about a candidate in the context of an election has solicited an illegal donation or contribution—regardless of what information is sought, why and in what form it is provided, and what ultimately happens with the information. Moreover, adopting a blanket rule that virtually *any* question to a foreign national for information about a candidate in connection with an election is an illegal solicitation—as the Complaint appears to allege—would distort the coverage of the statute beyond recognition, as explained below.

A. *Mr. Steele Did Not Violate the Plain Terms of 52 U.S.C. § 30121*

For three independent reasons, Mr. Steele's requests for information were not a solicitation of contributions or donations under the terms of the statute.

First, even on the allegations in the Complaint, it is undisputed that Mr. Steele was paid a fair market rate for his work on the dossier. This undisputed fact makes clear that Mr. Steele did

not violate the core prohibition of 52 U.S.C. § 30121, which bans foreign nationals like Mr. Steele from making contributions or donations in connection with American elections. (There is, of course, no prohibition in the statute on campaign committees hiring foreign nationals as campaign vendors at fair market rates. AO 2007-22 (*Hurysz*) at 4, 6.) Because Mr. Steele simply did his normal work at a fair market rate, he cannot have made a contribution or donation to any campaign.

By the same token, it makes no sense to call individual pieces of information that Mr. Steele may have learned from other foreign nationals, and that may have informed the dossier, "contributions" or "donations" to HFA. Given that the Complaint does not dispute that Mr. Steele was paid fair value for *all* of the information contained in the dossier, no one could have "contributed" that information to HFA through Mr. Steele. *See* 11 C.F.R. §§ 100.52(d)(1), 100.111(e)(1) (exempting services provided at the normal charge from the definition of contribution and expenditure); *see also* First Gen. Couns. Rep., MUR 6888 (*Republican National Committee, et al.*) at 20-21 (same).

Second, Mr. Steele could not have solicited contributions or donations from foreign nationals unless those foreign nationals *intended* to make a contribution or donation, *i.e.*, intended to give a thing of value for the specific "purpose of influencing any election for Federal office." 52 U.S.C. § 30101(8)(A)(i). But the Complaint never alleges that Mr. Steele's sources were providing information for the purpose of influencing an election. In fact, there is no allegation that the sources knew the purpose for which the information would be used, much less that the information would ultimately be used to benefit a candidate for election. If Mr. Steele's sources did not specifically intend to influence a federal election, then by definition they did not make contributions or donations, and Mr. Steele by definition did not solicit one.

Third, regardless of the intent of Mr. Steele's sources, the statutory scheme under the Act would be stretched beyond all recognition if the definition of "anything of value" that could constitute a "contribution" (or "donation"), *see* 52 U.S.C. § 30101(8)(A)(i), were expanded to include the type of raw, uncompiled information about a political candidate that Mr. Steele is alleged to have solicited from his sources to help inform his dossier.

There is no question that information can, in some circumstances, constitute a thing of value within the meaning of the statute. The Commission has recognized that compilations of information that are ordinarily exchanged for a recognized market value, such as polling data or opposition research reports, can constitute contributions or donations if given to a campaign for free. *See* AO 1990-12 (*Strub*) at 2 (per regulations regarding polling information, such information was a thing of value); *see also* First Gen. Couns. Rep., MUR 5409 (*Norquist*) at 10 (material that advocacy group had "utilized its resource to obtain and compile" was a thing of value); Gen. Couns. Br., MUR 4568 *et al.* (Cone) at 85 (group that paid thousands of dollars to obtain opposition research reports, then gave them to a campaign for free, had made a contribution). In other words, information that comes in a compiled form that normally must be paid for can be a thing of value in some circumstances.[2] Consistent with these decisions, as a compilation of information, the dossier could be deemed a thing of value—but of course, Mr. Steele is alleged to have been paid in exchange for the dossier, so he did not contribute or donate the dossier to HFA or the DNC.

[2] The Commission has recognized that in some situations, the practices of an industry may dictate that the "the usual and normal charge" for a valuable item is $0. *See* AO 1999-17 (*Gov. George W. Bush for Pres. Exploratory Comm.*) at 9 (if a vendor provides a valuable link to a candidate's website, a political committee must pay for the link only "if it would be normal industry practice to charge for the link").

However, nothing in the statute or decisions interpreting it suggests that the type of raw, uncompiled information at issue in Count IV is a thing of value that qualifies as a contribution or donation within the meaning of the statute. As alleged, the theory of Count IV of the Complaint is that Mr. Steele solicited illegal contributions (or donations) from foreign nationals when he solicited them to provide "things of value" to him in the form of information "relating to" or "concerning" Donald Trump in connection with the presidential election. Compl. ¶¶ 21, 59-60. This theory depends on defining contributions and donations so broadly that the raw, uncompiled pieces of information of the type that Mr. Steele allegedly gathered from a number of individual sources to inform his "dossier" would constitute things of value and the communication of that raw information to Mr. Steele would constitute the act of making a contribution.

So far as we are aware, no prior decision from the Commission has ever defined "anything of value," "contribution," or "donation" so broadly as to encompass the mere act of communicating raw information "relating to" or "concerning" a candidate to a person conducting opposition research on a candidate. To the contrary, in AO 2007-22 (*Hurysz*), a candidate asked whether he could use campaign funds to travel to Canada and "obtain information from Canadian citizens" that would be valuable in his election campaign. The Commission concluded that either campaign or personal funds could be used for this purpose, *id.* at 2-4; in so holding, the Commission never even suggested that raw, uncompiled pieces of information gathered from Canadian citizens were themselves things of value constituting contributions, or that gathering them could violate the foreign national prohibition—even though the Commission addressed the foreign national prohibition in another context in the very same advisory opinion. *Id.* at 5-6.

As the Commission implicitly recognized in *Hurysz*, treating certain compilations of information as things of value does not transform every piece of raw, uncompiled information

that a foreign national provides into a thing of value for purposes of the foreign national prohibition. Indeed, adopting the broad definitions of the terms at the heart of the Complaint's theory would have the consequence of upending the campaign finance law regime for both foreign nationals and U.S. citizens since broad swaths of communications would become subject to the campaign finance prohibitions and reporting requirements. Foreign nationals would be prohibited from giving any information "relating to" or "concerning" a candidate to a campaign (or a vendor performing working on behalf of a campaign, as is alleged here). And campaigns would not only be prohibited from receiving such information from foreign nationals, they would have to report as a contribution each instance of a communication of information "concerning" or "relating to" a political candidate they received from a U.S. citizen that exceeded a certain value (however that could be determined) and that is deemed to have been made for the purpose of influencing an election. *See* 52 U.S.C. §§ 30104(a)(1), (b)(2), (b)(3) (reporting requirements). Furthermore, individuals would be prohibited from communicating such information to campaigns once their individual contribution limits had met. *See* 52 U.S.C. § 30116 (individual contribution limits).[3] There is nothing in the statute, or the decisions interpreting it, suggesting that Congress intended the Act apply so broadly as to convert commonplace sharing of information about candidates into prohibited or reportable events.

For this reason, as well as the other reasons discussed above, Mr. Steele did not violate the Act by allegedly soliciting foreign nationals for information "concerning" or "relating to" Mr. Trump.

[3] In fact, under the theory of the Count IV as pled—which asks the Commission to find that Mr. Steele solicited contributions or donations from foreign nationals, but makes no allegations about whether those foreign nationals *intended* to influence an election—it would not even matter whether the speaker had the purpose of influencing an election, as long as he provided valuable information.

B. *The Complaint's Reading of the Foreign National Prohibition Would Render the Statute Unconstitutionally Overbroad*

Furthermore, to read the statute as the Complaint suggests would raise serious constitutional issues. In a 2011 three-member panel opinion authored by Judge Kavanaugh and affirmed by the Supreme Court, the United States District Court for the District of Columbia upheld the foreign national prohibition to the extent it barred foreign nationals from *spending money* in connection with American elections. *Bluman v. FEC*, 800 F. Supp. 2d 281 (D.D.C. 2011), *aff'd,* 132 S. Ct. 1087 (2012). The *Bluman* opinion repeatedly cautioned, however, that the prohibition had to be narrowly construed to avoid violating the First Amendment. As the opinion explained, the foreign national prohibition "restrains [foreign nationals] only from a certain form of expressive activity closely tied to the voting process—providing money for a candidate or political party or spending money in order to expressly advocate for or against the election of a candidate." *Id.* at 290. The Court expressly cautioned that its opinion "should not be read to support" any broader restrictions on speech. *Id.* at 292.

Here, the Complaint asks the Commission to impose much broader restrictions on pure speech. As noted above, the Complaint seeks to expand "anything of value" in the Act's definition of "contribution" to encompass raw, uncompiled information that merely "concern[s]" or "relate[s]" to a candidate. As we noted above, it would mean that foreign nationals could not communicate any information about a political candidate to a campaign for the purpose of influencing an election. Further, it would mean that campaigns would have to report raw political information that they received from U.S. citizens for the purpose of influencing an election if the information exceeded a certain value (however that could be determined), and that

U.S. citizens would be prohibited from communicating such information once their individual contribution limits had been met.

Even if the Commission were to assume that Congress intended to adopt such an unprecedented and draconian rule, any rule that would prohibit such vast amounts of pure speech—not spending or even express advocacy—would be substantially overbroad and therefore unconstitutional as a matter of law. *See Buckley v. Valeo*, 424 U. S. 1, 80 (1976) (construing "expenditure" narrowly to avoid an unconstitutionally overbroad reading of campaign finance law); *see also, e.g.*, *United States v Stevens*, 559 U.S. 460, 464, 482 (2010) (striking down as facially overbroad a federal statute that criminalized the commercial creation, sale or possession of "depictions of animal cruelty" where law would prohibit videos depicting legal activities like hunting or advocacy images of inhumanely treated livestock). At the least, the Act should be construed to avoid such constitutional issues.

II. As a Matter of Law, Mr. Steele Did Not Make a Donation or Expenditure by Providing Information to a Reporter (Count VI)

Count VI of the Complaint alleges that Mr. Steele made a prohibited donation or expenditure related to the 2016 presidential election by giving written and verbal information to reporter David Corn, which Mr. Corn relied on for a news story published on *Mother Jones'*s website. For the reasons set forth below, the idea that giving information to a reporter can be a prohibited donation or expenditure is not close to colorable.

The Complaint does not dispute that *Mother Jones* is a bona fide independent news organization that was reporting on issues of national importance. Hence, the theory of Count VI is that whenever any foreign national gives a reporter information for the purpose of influencing a federal election, the person is making a donation or expenditure because the information provided constitutes "anything of value" within the meaning of the statute. The upshot of this

theory is that American reporters would be prohibited from asking foreign nationals for information relevant to U.S. elections, and foreign nationals would be prohibited from providing information to American reporters, if the solicited communication could be deemed to be for the purpose of influencing an election. But treating conversations between foreign nationals and reporters as prohibited donations or expenditures would seriously impede the work of the press—contrary to Congress's and the Commission's consistent protections for the press in campaign finance laws—and it would violate the First Amendment.

As noted above at page five, a contribution or expenditure is a payment or "anything of value" given for the purpose of influencing a federal election, and "donation" is treated as synonymous with "contribution" with regard to the foreign national prohibitions. However, the regulations carve out a key exception to the definitions of "contribution" (and therefore also "donation") and "expenditure": under the so-called press exemption, any costs associated with "covering or carrying a news story . . . by any . . . magazine or periodical publication, including any Internet or electronic publication" are not contributions or expenditures, except in some cases where the publication is owned or controlled by a political party, committee, or candidate. 52 U.S.C. § 30101(9)(B)(i); 11 C.F.R. § 100.73. In establishing the press exemption, Congress made clear that "[i]t is not the intent of the Congress in the present legislation to limit or burden in any way the First Amendment freedoms of the press and of association. Thus the exclusion assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." H. R. Rep. No. 93-1239, p. 4 (1974). The Supreme Court has likewise recognized that the press has the critical responsibility in elections of "informing and educating the public, offering criticism, and providing a forum for discussion and debate," and that campaign finance laws therefore must not "hinder or prevent the institutional press from

reporting on . . . newsworthy events." *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 667 (1990), *overruled on other grounds*, 558 U.S. 310 (2010).

Because Mr. Corn and *Mother Jones* clearly did not make a contribution, donation or expenditure by publishing the October 31, 2016 story, it follows that Mr. Steele did not make a prohibited donation or expenditure by providing the underlying information to Mr. Corn. It would radically "limit or burden . . . the First Amendment freedoms of the press" and "hinder or prevent the institutional press from reporting on . . . newsworthy events" if providing information to a reporter could constitute a donation or expenditure for purposes of campaign finance laws, even if such information is provided for the purpose of influencing a federal election. Despite the obvious relevance of foreign affairs to American elections, reporters could not ask any questions of a foreign national without potentially illegally soliciting valuable information. This unprecedented proposal has no basis in the statute or reality, which perhaps explains why none of the law cited in the Complaint is on point. *See* Compl. ¶ 73 (citing cases about foreign national corporate officers participating in decisions about corporate donations); Compl. ¶ 75 (generally citing the expenditure regulations and a decision concluding that an entertainer could donate a concert to a campaign under the volunteer exemption).

When the Commission and the courts have addressed claims that press activities violate the First Amendment, they have been extremely hesitant to find a campaign finance violation. In the seminal case of *Reader's Digest Assn. v. Federal Election Commission*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981), the court noted that "research" for an article was "on [its] face exempt" from the Act, and strictly cabined the Commission's ability to investigate other claims about the press organizations' work. The court explained that "freedom of the press is substantially eroded by investigation of the press . . . [and] [t]hose concerns are particularly acute where a

governmental entity is investigating the press in connection with the dissemination of political matter." *Id.* at 1214. Similarly here, even investigating press sources—let alone prohibiting them from talking to the press—"substantially erodes press freedom," which is a "particularly acute" concern where the topic of the article is information relevant to a pending election. On this ground, the Commission has refused to investigate borderline cases involving the press, given "the overriding protection of the 1st amendment in this area." MUR 296 (76) (*Penthouse Magazine*).

In addition to the press exemption, a separate provision of the regulations—the "internet activities" exemption—also underscores that Mr. Steele's alleged communication with Mr. Corn cannot be characterized as a donation or expenditure. The internet activities exemption provides that "[w]hen an individual or a group of individuals, acting independently or in coordination with any candidate . . . engages in Internet activities" such as blogging, creating a website, or sending "any other form of communication distributed over the Internet," the individual's uncompensated internet activities are not a contribution (and therefore not a donation) or expenditure. 11 C.F.R. §§ 100.94, 100.55. Clearly, then, Mr. Steele could have posted his information on a blog, or in the comments section of an article on *Mother Jones*, without making a contribution, donation, or expenditure. The result should be no different where he spoke to Mr. Corn, who published an article based on information he learned from Mr. Steele on *Mother Jones'*s website.

In sum, the Act is designed to ensure that campaign finance restrictions do not inhibit the press from reporting important information that could influence an election or inhibit individuals from providing such information online. In this case, Mr. Steele is alleged to have spoken online through a reporter. Under both the press exemption and the internet activities exemption, his doing so cannot be characterized as a donation or an expenditure in violation of the Act.

Here again, adopting the Complaint's theories would jeopardize core political speech and press functions. There is no reason to believe that Congress intended this result, particularly since American reporters have requested and foreign citizens have provided information to the press since the passage of the earliest campaign finance laws, with no suggestion from either the Commission or Congress that doing so violated the statute. Moreover, for the reasons explained in the previous section, adopting the Complaint's legal theories would render the provision substantially overbroad in violation of the First Amendment. For all of these reasons, the Commission should find no reason to believe that Count VI states a violation of the statute.

III. As a Matter of Law, Mr. Steele Did Not Participate in HFA's or the DNC's Decision-Making Process by Providing Them with Information He Was Paid to Provide (Count VII)

Count VII alleges that Mr. Steele violated 11 C.F.R. § 110.20(i), which provides that "[a] foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any . . . political committee . . . with regard to such [committee's] Federal or non-Federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements[.]" The Complaint states that HFA and the DNC are political committees, but notably, the Complaint does not allege that Mr. Steele had any actual involvement with the decision-making processes of those committees; indeed, the Complaint never even suggests that Mr. Steele *spoke* to anyone from HFA or the DNC. Rather, the Complaint relies on the following syllogism: Mr. Steele provided information to Fusion GPS, which in turn provided the information to HFA and the DNC; HFA and the DNC might have relied on that information in making decisions about whether to make expenditures for ads; therefore, "[r]egardless of whether the DNC or HFA actually used any of the contents of the Steele dossier in their expenditures, by providing material to them, Steele indirectly participated in their decisionmaking process concerning those expenditures." Compl. ¶ 81.

As with the other Counts, the consequences of this argument are nonsensical. Under this theory, for instance, any member of the foreign press who reports on an important story has provided information to campaigns that may help determine how they make campaign expenditures; ergo, the foreign reporter has "indirectly participated in their decisionmaking process" concerning those expenditures. Or—as is alleged here—any foreign national who provides services to a campaign in exchange for their fair market value can be charged with participating in the campaign's decision-making process. This contorted reading of 11 C.F.R. § 110.20(i) finds no support in the Commission's prior opinions, which make clear that the question is whether the foreign national is actually participating in a campaign's decision-making process (directly or through an intermediary) about campaign expenditures.

The Commission has repeatedly refused to read 11 C.F.R. § 110.20(i) in the expansive manner the Complaint suggests. For instance, in MUR 5987 (*Sir Elton John*), the Commission rejected out of hand a Complaint alleging that Elton John had indirectly participated in the decision-making progress of Hillary Clinton's campaign "by allowing the direct and indirect use of his likeness and name" in an email advertising a concert he was performing for the campaign. The theory of the complaint there, which is echoed in the Complaint here, appeared to be that Elton John had indirectly participated in the campaign's decision-making about expenditures by providing information that the campaign might wish to use in advertisements. The Commission wrote that this "limited participation in the direct and indirect use of his likeness . . . does not constitute participation in the decision-making progress of the Committee." *Id.* at 7. The Commission observed that "[i]n fact, the pertinent regulation speaks of *decisions* concerning the making of contributions, donations, expenditures, or disbursements"—not providing information that may go into the decision-makers' analysis. *Id.* at 7-8 (emphasis added).

Similarly, the Commission found that a foreign national volunteer for the DNC who did "online research, review[ed] social media pages, and translat[ed] documents" could not be characterized as directly or indirectly participating in the DNC's decision-making, so her work did not violate any laws. MUR 6959 (*Nava*) at 2, 4. The Commission has also found that the foreign national wife of a candidate could attend campaign strategy meetings, so long as she was not "involved in the management" of the candidate's committee. AO 2004-26 (*Weller*) at 3 (holding that 11 C.F.R. § 110.20(i) is meant to prohibit "foreign national involvement in the management of any political committee, and its decisions regarding its receipts and disbursements"). And in numerous cases regarding whether U.S. subsidiaries of foreign corporations can make political donations, the Commission has consistently held that U.S. subsidiaries may make such donations so long as the "individuals who will exercise decision-making authority with respect to Committee activities will not be foreign nationals." AO 1980-100 (*Arazow*) at 2; *see also* AO 2006-15 (*TransCanada*) (allowing foreign nationals to set a total budget for political donations so long as decisions about specific expenditures were made by U.S. citizens or permanent residents).

In short, the Commission has repeatedly refused to find that foreign nationals who merely provide information to political committees violate 11 C.F.R. § 110.20(i) *unless* those individuals actually participate in making decisions for the political committee, either themselves or through some other person. A contrary rule would be unworkable in practice and would create yet another substantial overbreadth problem under the First Amendment. Accordingly, the Commission should find no reason to believe that Mr. Steele violated 11 C.F.R. § 110.20(i) when he indirectly provided information to HFA and the DNC, but had no involvement in those

committees' decisions about how to expend their resources or how to use (or not use) the information he provided in the 2016 election campaign.

CONCLUSION

For the foregoing reasons, Mr. Steele asks that the Commission find no reason to believe that the allegations of Counts IV, VI, and VII state any violation of the campaign finance laws.

Respectfully submitted,

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