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Holding Power Accountable

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# BEFORE THE FEDERAL ELECTION COMMISSION

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v. MUR No. _____

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United Kingdom

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JOHN DOE(S), unknown foreign national(s) that participated in the decision-making processes of U.S. clients of Cambridge Analytica

## COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information providing reason to believe that Cambridge Analytica LTD, SCL Group Limited, Alexander Nix, Nigel Oakes, Alexander Tayler, Mark Turnbull, Christopher Wylie and/or unknown persons ("John Doe(s)") violated prohibitions on foreign national election-related activities established by the Federal Election Campaign Act (FECA), 52 U.S.C. § 30101, *et seq.* and Commission regulations.

2. Specifically, based on publicly available data and published reports, complainants have reason to believe that Cambridge Analytica LTD, SCL Group Limited, Alexander Nix, Nigel Oakes, Alexander Tayler, Mark Turnbull, Christopher Wylie and/or unknown persons ("John Doe(s)"), violated the federal law prohibition on foreign nationals "directly or indirectly participat[ing] in

the decision-making process of any . . . political committee . . . such as decisions concerning the making of . . . expenditures, or disbursements in connection with elections for any Federal, State, or local office . . . ." 11 C.F.R § 110.20(i); *see also* 52 U.S.C. § 30121(a)(1).

3. "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [the FECA] . . . [t]he Commission shall make an investigation of such alleged violation . . . ." 52 U.S.C. § 30109(a)(2) (emphasis added); *see also* 11 C.F.R. § 111.4(a).

4. "A 'reason to believe' finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope." FEC, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545 (March 16, 2007).

## FACTS

5. Cambridge Analytica LTD (hereinafter "Cambridge Analytica") is a London-based private limited company that was incorporated in the United Kingdom on July 30, 2014, and is a foreign national for the purposes of FECA.[1] Cambridge Analytica is reportedly also incorporated in Delaware.[2] According to the *New York Times*, Cambridge Analytica is "effectively a shell—it

[1] *See* U.K. Companies House Registration, Company Number 09154503, *available at* https://beta.companieshouse.gov.uk/company/09154503.

[2] *See, e.g.*, Andy Kroll, "Cloak and Data: The Real Story Behind Cambridge Analytica's Rise and Fall," MOTHER JONES, May/June 2018 Issue ("The company was incorporated in Delaware on December 31, 2013."), *available at* https://www.motherjones.com/politics/2018/03/cloak-and-data-cambridge-analytica-robert-mercer/.

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."[3]

6. SCL Group Limited (hereinafter "SCL Group") is a London-based private limited company that was incorporated in the United Kingdom on July 20, 2005, and is a foreign national for the purposes of FECA.[4] Sometime after the 2016 election, SCL Group reportedly "relocated its global headquarters from London to Arlington, Virginia."[5]

7. Alexander Nix is a director of SCL Group[6] and chief executive of Cambridge Analytica[7] (suspended on March 20, 2018[8]) and is a foreign national for the purposes of FECA.

8. Nigel Oakes is a director and co-founder of SCL Group[9] who "data analytics experts" describe as a "hidden hand running both SCL and Cambridge Analytica,"[10] and is a foreign national for

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[3] Matthew Rosenberg, "Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal," NEW YORK TIMES, March 20, 2018, *available at* https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html.

[4] *See* U.K. Companies House Registration, Company Number 05514098, *available at* https://beta.companieshouse.gov.uk/company/05514098.

[5] Andy Kroll, "Cloak and Data: The Real Story Behind Cambridge Analytica's Rise and Fall," MOTHER JONES, May/June 2018 Issue, *available at* https://www.motherjones.com/politics/2018/03/cloak-and-data-cambridge-analytica-robert-mercer/.

[6] *See* U.K. Companies House Registration, Company Number 05514098, *available at* https://beta.companieshouse.gov.uk/company/05514098.

[7] Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, "How Trump Consultants Exploited the Facebook Data of Millions," NEW YORK TIMES, March 17, 2018, *available at* https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html.

[8] Matthew Rosenberg, "Cambridge Analytica Suspends C.E.O. Amid Facebook Data Scandal," NEW YORK TIMES, March 20, 2018, *available at* https://www.nytimes.com/2018/03/20/world/europe/cambridge-analytica-ceo-suspended.html.

[9] *See* U.K. Companies House Registration, Company Number 05514098, *available at* https://beta.companieshouse.gov.uk/company/05514098.

[10] Josh Meyer, "Cambridge Analytica boss went from 'aromatics' to psyops to Trump's campaign," POLITICO, March 22, 2018, *available at* https://www.politico.eu/article/cambridge-analytica-facebook-data-boss-nigel-oakes-alexander-nix-went-from-aromatics-to-psyops-to-donald-trumps-campaign/.

the purposes of FECA.

9. Alexander Tayler joined Cambridge Analytica in 2014 as its "lead data scientist" and is presently serving as its acting chief executive, and is a foreign national for the purposes of FECA.[11]

10. Mark Turnbull is a managing director at Cambridge Analytica[12] and is a foreign national for the purposes of FECA.

11. Christopher Wylie is a "Canadian who ran messaging for Cambridge out of its London office in 2014 . . . on all the company's U.S. political campaigns," who left Cambridge Analytica just before the November 2014 U.S. elections[13] and is a foreign national for the purposes of FECA.

12. John Doe is a foreign national for the purposes of FECA who, through employment with Cambridge Analytica and/or SCL Group, participated in the decision-making processes of one or more U.S. political committees concerning the making of expenditures or disbursements in connection with elections for federal, state or local office.

13. According to Commission records,[14] during the 2014 election cycle, the following federal committees made disbursements to Cambridge Analytica for goods and services in the

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[11] *Id.*

[12] "Exposed: Undercover secrets of Trump's data firm," CHANNEL 4 NEWS, March 20, 2018, *available at* https://www.channel4.com/news/exposed-undercover-secrets-of-donald-trump-data-firm-cambridge-analytica.

[13] Anna R. Schecter, "Wylie: Foreigners worked for Cambridge Analytica on NC Senate campaign," NBC NEWS, March 23, 2018, *available at* https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526.

[14] Disbursements to Cambridge Analytica LLC 2013-14, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2014&data_type=processed&recipient_name=cambridge+analytica&min_date=01%2F01%2F2013&max_date=12%2F31%2F2014.

following amounts:

- John Bolton Super PAC: $342, 025
- North Carolina Republican Party: $150,000
- Jobs Growth and Freedom Fund (Sen. Ted Cruz Leadership PAC): $133,333.33
- Thom Tillis Committee: $30,000
- Art Robinson for Congress: $20,000
- McHenry for Congress: $15,000
- Cotton for Senate: $20,000
- Dr. Monica Wehby for US Senate: $20,000

14. According to Commission records,[15] during the 2016 election cycle, the following federal committees made disbursements to Cambridge Analytica for goods and services in the following amounts:

- Donald J. Trump for President, Inc.: $5,912,500
- Cruz for President: $5,805,552.23
- Make America Number 1: $1,476,484
- John Bolton Super PAC: $811,274
- Keep the Promise II: $570,000
- Carson America: $438,065
- Restore/Restoring American Leadership: $155,725
- Thom Tillis Committee: $100,000
- North Carolina Republican Party: $65,000
- Walters for Congress: $20,000
- Friends of Roy Blunt: $12,000
- Rick Kozell for Congress: $5,210

15. On March 17, 2018, the *New York Times* reported that, during the 2014 election cycle, Cambridge Analytica "harvested private information from the Facebook profiles of more than 50 million users without their permission, according to former Cambridge employees,

[15] Disbursements to Cambridge Analytica LLC 2015-16, https://www.fec.gov/data/disbursements/?two_year_transaction_period=2016&data_type=processed&recipient_name=cambridge+analytica&min_date=01%2F01%2F2015&max_date=12%2F31%2F2016.

associates and documents, making it one of the largest data leaks in the social network's history."[16]

16. The same *New York Times* article reported details of legal advice Cambridge Analytica received regarding federal campaign finance law.

> According to the documents and former employees, any contracts won by Cambridge, originally incorporated in Delaware, would be serviced by London-based SCL and overseen by Mr. Nix, a British citizen who held dual appointments at Cambridge Analytica and SCL. Most SCL employees and contractors were Canadian, like Mr. Wylie, or European.
>
> But in July 2014, an American election lawyer advising the company, Laurence Levy, warned that the arrangement ***could violate laws limiting the involvement of foreign nationals in American elections***.
>
> In a memo to Mr. Bannon, Ms. Mercer and Mr. Nix, the lawyer, then at the firm Bracewell & Giuliani, warned that Mr. Nix would have to recuse himself "from substantive management" of any clients involved in United States elections. The data firm would also have to find American citizens or green card holders, Mr. Levy wrote, "to ***manage the work and decision making functions***, relative to campaign messaging and expenditures."[17]

17. According to the *New York Times*, when Cambridge Analytica worked in the 2014 U.S. midterm elections, "***[f]ew Americans were involved in the work***, which included polling, focus groups and message development for the John Bolton Super PAC, conservative groups in Colorado and the campaign of Senator Thom Tillis, the North Carolina Republican."[18]

18. And Cambridge Analytica reportedly "exhibited a similar pattern in the 2016 election cycle,

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[16] Matthew Rosenberg, Nicholas Confessore and Carole Cadwalladr, "How Trump Consultants Exploited the Facebook Data of Millions," NEW YORK TIMES, March 17, 2018 (emphasis added), *available at* https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html.

[17] *Id.* (emphasis added).

[18] *Id.* (emphasis added).

when the company worked for the campaigns of Mr. Cruz and then Mr. Trump" and "most of its data scientists were citizens of the United Kingdom or other European countries, according to two former employees."[19]

> Under the guidance of Brad Parscale, Mr. Trump's digital director in 2016 and now the campaign manager for his 2020 re-election effort, Cambridge performed a variety of services, former campaign officials said. That included ***designing target audiences for digital ads and fund-raising appeals, modeling voter turnout, buying $5 million in television ads and determining where Mr. Trump should travel to best drum up support.***[20]

19. On March 20, 2018, Britain's *Channel 4 News* published the results of an undercover investigation of Cambridge Analytica, based on a series of meetings filmed at London hotels between November 2017 and January 2018 with Cambridge Analytica senior executives Alexander Nix, Mark Turnbull and Alex Tayler.[21]

> Mr Nix boasted about Cambridge Analytica's work for Trump, saying: "***We did all the research, all the data, all the analytics, all the targeting, we ran all the digital campaign, the television campaign and our data informed all the strategy.***"
>
> Separately, Mr Turnbull described how the company could ***create proxy organisations*** to discreetly feed negative material about opposition candidates on to the Internet and social media.
>
> He said: "Sometimes you can use proxy organisations who are already there. You feed them. They are civil society organisations.. Charities or activist groups, and we use them – feed them the material and they do the work...
>
> "***We just put information into the bloodstream to the internet*** and then watch it grow, give it a little push every now and again over time to watch it take shape. And so

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[19] *Id.*

[20] *Id.* (emphasis added).

[21] "Exposed: Undercover secrets of Trump's data firm," CHANNEL 4 NEWS, March 20, 2018, *available at* https://www.channel4.com/news/exposed-undercover-secrets-of-donald-trump-data-firm-cambridge-analytica.

this stuff infiltrates the online community and expands but with no branding – so it's unattributable, untrackable."[22]

20. *Channel 4 News* also filmed Cambridge Analytica's senior executives discussing their strategy of "putting out positive messages through the official Donald J Trump for President campaign, while negative material was pushed out through outside organisations," referring to super PACs "running behind the campaign" with negative attack ads.[23]

21. In another filmed meeting, Cambridge Analytica executive Mark Turnbull "described how the company created the 'Defeat Crooked Hilary' brand of attack ads, that were funded by the Make America Number 1 super-PAC and watched more than 30 million times during the campaign."[24]

22. On March 23, 2018, *NBC News* published the legal memo referenced in the March 17 *New York Times* article, from attorney Laurence Levy to his client Cambridge Analytica, in the context of the story also reporting that Christopher Wylie, a "Canadian who ran messaging for Cambridge out of its London office in 2014, said he worked on all the company's U.S. political campaigns in 2014" including the Tillis U.S. Senate campaign in North Carolina.[25]

23. The legal memo from Mr. Levy to Rebekah Mercer, Steve Bannon, and Alexander Nix of Cambridge Analytica, dated July 24, 2014,[26] begins by noting the federal law prohibition on

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[22] *Id.* (emphasis added).
[23] *Id.*
[24] *Id.*
[25] Anna R. Schecter, "Wylie: Foreigners worked for Cambridge Analytica on NC Senate campaign," NBC NEWS, March 23, 2018, *available at* https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526.
[26] Confidential Memorandum From Mr. Laurence Levy To Rebekah Mercer, Steve Bannon, and Alexander Nix Regarding "Participation in US Elections," July 24, 2014, *available at*

contributions by foreign nationals and then advises that "[o]f greater concern is 11 CFR §110.20(i)," the prohibition on participation by foreign nationals in decisions involving election-related activities."[27] The memo details the relevant statutory and regulatory sections, along with other Commission interpretive guidance, and also notes that violations of these provisions:

> [A]re subject to criminal prosecution, punishable by fines and imprisonment, in addition to administrative action by the Federal Election Commission. As such, the Department of Justice has jurisdiction to engage in discovery of documents and emails, to question witnesses, and otherwise use all the tools at its disposal to investigate and prosecute alleged violations.[28]

24. Mr. Levy advised Mercer, Bannon and Nix that "because Cambridge is currently being managed day to day by Mr. Nix, in order for Cambridge to engage in [U.S. election] activities Mr. Nix would first have to be recused from substantive management of any such clients involved in U.S. elections[.]"[29] Mr. Levy further advised his clients to "ensure that only US citizens are making decisions about US election activity" and managing the "work and decision making functions, relative to campaign messaging and expenditures."[30] Mr. Levy explained that while "foreign nationals may act as functionaries that collect and process data, . . . the final analysis of said data should be conducted by U.S. citizens and conveyed to any U.S. client by such citizens."[31] Mr. Levy warned:

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http://msnbcmedia.msn.com/i/TODAY/z_Creative/LEVY_MEMO_DM_4636592_v1_Memo_re__Participation_in_US_Elections.pdf.

[27] *Id.* at 1.

[28] *Id.* at 3-4.

[29] *Id.* at 6.

[30] *Id.* at 6-7.

[31] *Id.* at 7.

> If the foreign nationals were to conduct the analysis it could support a claim of indirectly participating in the decision to spend federal campaign funds. To the extent you are aware of foreign nationals providing services, including polling and marketing, it would appear that unless it is being done through U.S. citizens, or foreign nationals with green cards, the activity would violate the law.[32]

25. Mr. Levy concluded his memo to Mercer, Bannon and Nix with a final admonition:

> Remember, it is the ability to influence the expenditure of campaign dollars, at the federal, state or local level that is prohibited, therefore those that analyze and advi[s]e would likely be considered to be influencing a campaign, while those purely involved in data gathering, and general modeling would not. Moreover, the person who records video or audio is clearly a functionary, while the editor is likely to be viewed as a decision "influencer". It would be safest to have U.S. citizens perform the message editing functions.[33]

26. The March 23 *NBC News* article indicated that Bannon, Mercer, Nix and the Cambridge Analytica team did not follow their counsel's advice:

> [Former Cambridge Analytica employee Christopher] Wylie said that many foreign nationals worked on the campaigns, and many were embedded in the campaigns around the U.S. "It was not just me," he said. "Like 20 other people were. We had Canadians, British, Eastern Europeans, Lithuanians, Germans, Romanians, Greeks."
>
> "We weren't just working on messaging. We were instructing campaigns on which messages go where and to who."
>
> Wylie said that his largely foreign team instructed the Tillis campaign "on the messaging. We crafted his messaging, we targeted his messaging."[34]

27. *NBC News* further reported Wylie stating that "[t]here were three or four full-time [Cambridge Analytica] staffers embedded in Tillis's campaign on the ground in Raleigh. All of them were

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[32] *Id.*

[33] *Id.* at 9.

[34] Anna R. Schecter, "Wylie: Foreigners worked for Cambridge Analytica on NC Senate campaign," NBC NEWS, March 23, 2018, *available at* https://www.nbcnews.com/politics/elections/wylie-foreigners-worked-cambridge-analytica-nc-senate-campaign-n859526.

foreign nationals."[35] A second former senior Cambridge Analytica staffer corroborated Wylie's statement, explaining that "most of the messaging team in 2014 was composed of foreign nationals" and confirming that "there were foreign embeds in Raleigh on the Tillis campaign."[36] This second Cambridge Analytica staffer also said that the "team handling the data and data modeling back in London was largely Eastern European and did not include any Americans."[37]

28. On March 25, 2018, the *Washington Post* published further details regarding Cambridge Analytica's employment of foreign nationals in U.S. elections, reporting: "Cambridge Analytica assigned dozens of non-U.S. citizens to provide campaign strategy and messaging advice to Republican candidates in 2014, according to three former workers for the data firm, even as an attorney warned executives to abide by U.S. laws limiting foreign involvement in elections."[38]

> Cambridge Analytica and SCL Group were overwhelmingly staffed by non-U.S. citizens—mainly Canadians, Britons and other Europeans—at least 20 of whom fanned out across the United States in 2014 to work on congressional and legislative campaigns, the three former Cambridge workers said.
>
> ***Many of those employees and contractors were involved in helping to decide what voters to target with political messages and what messages to deliver to them***, the former workers said. Their tasks ran the gamut of campaign work, including "managing media relations" as well as fundraising, planning events, and providing

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[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] Craig Timberg and Tom Hamburger, "Former Cambridge Analytica workers say firm sent foreigners to advise U.S. campaigns," WASHINGTON POST, March 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?utm_term=.1325e7c59315.

> "communications strategy" and "talking points, speeches [and] debate prep," according to a document touting the firm's 2014 work.
>
> "***Its dirty little secret was that there was no one American involved in it, that it was a de facto foreign agent, working on an American election***," [Christopher] Wylie said.[39]

29. The *Washington Post* further reported that Cambridge Analytica foreign national staff regularly discussed the legal implications of their work.

> Two other former Cambridge Analytica workers, who spoke on the condition of anonymity because of fear that they may have violated U.S. law in their campaign work, said ***concerns about the legality of Cambridge Analytica's work in the United States were a regular subject of employee conversations at the company***, especially after the 2014 vote.
>
> The two former workers, who, like Wylie, were interviewed in London, said employees worried the company was giving its foreign employees potentially inaccurate immigration documents to provide upon entering the United States, showing that they were not there to work when they had arrived for the purpose of advising campaigns.
>
> "***We knew that everything was not above board***, but we weren't too concerned about it," said one of the former Cambridge Analytica workers, who spent several months in the United States working on Republican campaigns. "It was the Wild West. That's certainly how they carried on in 2014."[40]

30. Christopher Wylie told the *Washington Post* that "he was part of multiple conference calls in 2014 with Bannon and Nix, a Briton, in which ***strategic campaign matters were discussed***" and that "these conversations also often featured discussions about the legal issues raised in the July 2014 Levy memo, which was made public in recent days by Wylie."[41]

31. One Cambridge Analytica document obtained by the *Washington Post* explained: "For the Art Robinson for Congress campaign, ***Cambridge Analytica SCL*** assumed a comprehensive set of

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[39] *Id.* (emphasis added).
[40] *Id.* (emphasis added).
[41] *Id.* (emphasis added).

responsibilities and ***effectively managed the campaign in its entirety***, with strategic advice channeled through US nationals on the CA-SCL team[.]"[42] Mr. Robinson commented to the *Washington Post* that he did not know about the nationalities of the Cambridge Analytica employees. "Cambridge was very helpful," he said, noting that ***the company and his team "melded and worked side by side."***[43]

32. Reporting by other news outlets has further detailed Cambridge Analytica's involvement in decision-making and management decisions of U.S. political committee clients concerning expenditures and disbursements during the 2014 and 2016 elections.

33. The *New York Times* reported that the John Bolton Super PAC "first hired Cambridge in August 2014, months after the political data firm was founded and while it was still harvesting the Facebook data," and that the relationship between the two grew so close that Cambridge Analytica "was writing up talking points for Mr. Bolton."[44] The Bolton PAC paid Cambridge Analytica more than $1 million for "behavioral microtargeting with psychographic messaging" and Canadian Christopher Wylie did work for the PAC, explaining to the *New York Times* "The Bolton PAC was obsessed with how America was becoming limp wristed and spineless and it wanted research and messaging for national security issues[.]"[45]

> Using the psychographic models, ***Cambridge helped design concepts for advertisements for candidates*** supported by Mr. Bolton's PAC, including the 2014 campaign of Thom Tillis, the Republican senator from North Carolina, according to Mr.

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[42] *Id.* (emphasis added).
[43] *Id.* (emphasis added).
[44] Matthew Rosenberg, "Bolton Was Early Beneficiary of Cambridge Analytica's Facebook Data," NEW YORK TIMES, March, 23, 2018, *available at* https://www.nytimes.com/2018/03/23/us/politics/bolton-cambridge-analyticas-facebook-data.html.
[45] *Id.*

> Wylie and another former employee, who spoke on the condition of anonymity to avoid being dragged into the investigations that now appear to be engulfing Cambridge.
>
> One advertisement, a video that was posted on YouTube, was aimed at people who scored high for conscientiousness, and were thought to respect hard work and experience. It emphasized Mr. Bolton's time working for Ronald Reagan and how Mr. Tillis embodied the spirit and political ethos of the late president.[46]

34. The *New York Times* explained SCL Group's work for the Bolton PAC:

> ***Staff from SCL's elections division***, which through a convoluted corporate structure ***was interchangeable with Cambridge***, discussed what they were doing at a meeting in July 2014 with another contractor for the Bolton PAC, according to an agenda of the meeting obtained by The Times.
>
> The profiles would be used to "identify the personality traits of individuals" in states to be targeted by the Bolton PAC, said the agenda, which was prepared for SCL and Cambridge staff. "Individuals can be targeted with the right message," it said.[47]

35. *Mother Jones* reported that a "consultant for Thom Tillis' [2014] US Senate race in North Carolina singled out for praise a Cambridge contractor who had embedded with the campaign."[48]

36. *Mother Jones* reported the deep involvement of Cambridge Analytica staff in the management and decision-making in Senator Ted Cruz's 2016 presidential campaign. "Brought to Cruz by two of the campaign's biggest backers, hedge fund billionaire Robert Mercer and his daughter Rebekah, ***Cambridge Analytica was put in charge of the entire data and digital operation, embedding 12 of its employees in Houston***."[49]

According to internal Cambridge memos, the firm devised four personality types of

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[46] *Id.* (emphasis added).
[47] *Id.* (emphasis added).
[48] Andy Kroll, "Cloak and Data: The Real Story Behind Cambridge Analytica's Rise and Fall," MOTHER JONES, May/June 2018 Issue, *available at* https://www.motherjones.com/politics/2018/03/cloak-and-data-cambridge-analytica-robert-mercer/.
[49] *Id.*

> possible Cruz voters—"timid traditionalists," "stoic traditionalists," "temperamental" people, and "relaxed leaders." ***The memos laid out how the campaign should talk to each group about Cruz's marquee issues***, such as abolishing the IRS or stopping the Iran nuclear deal. A timid traditionalist, the memo said, was someone who was "highly emotional" but valued "order and structure in their lives." For this kind of person, an "Abolish the IRS" message should be presented as something that "will bring more/restore order to the system." ***Recommended images*** included "a family having a nice moment together, with a smaller image representing Washington off to the side—representing that a small state makes for better private moments." But for a temperamental type, ***the suggested image*** was a "young man tossing away a tax return and taking the key of his motorbike to head out for a ride."[50]

37. Also according to *Mother Jones*, at a September 2016 event, Alexander Nix explained to the audience "how Cambridge Analytica had turned Ted Cruz from an obscure and reviled US senator into 'the only credible threat to the phenomenon Donald Trump.'"[51]

38. *Forbes* reported that, in a 2016 interview about the 2016 Trump campaign's digital operations, Jared Kushner told the publication:

> We found that Facebook and digital targeting were the most effective ways to reach the audiences. After the primary, we started ramping up because we knew that doing a national campaign is different than doing a primary campaign. That was when we formalized the system because we had to ramp up for digital fundraising. ***We brought in Cambridge Analytica.***[52]

39. *Mother Jones* explained that after Ted Cruz dropped out of the presidential race in May 2016, the Mercer family "shifted their alliance to Trump, and his campaign hired their data firm

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[50] *Id.* (emphasis added).

[51] *Id.*

[52] Steven Bertoni, "Jared Kushner In His Own Words On The Trump Data Operation The FBI Is Reportedly Probing," FORBES, May 26, 2017 (emphasis added), *available at* https://www.forbes.com/sites/stevenbertoni/2017/05/26/jared-kushner-in-his-own-words-on-the-trump-data-operation-the-fbi-is-reportedly-probing/#29a6c724a90f.

[Cambridge Analytica] over Manafort's apparent objections."[53] *Mother Jones* continued: "Soon Trump jettisoned Manafort and installed in his place the Mercers' political Svengali, Steve Bannon, who was also a board member, vice president, and part-owner of Cambridge Analytica."[54]

40. According to *Mother Jones*, by late-June 2016 Alexander Nix had landed a contract with the Trump campaign.

> At first, ***a handful of Cambridge employees set up shop in San Antonio***, where Parscale was running Trump's digital operation out of his marketing firm's offices. But Matt Oczkowski, Cambridge's head of product, was eventually put in charge of the San Antonio office after Parscale relocated to campaign headquarters in Trump Tower.[55]

## SUMMARY OF THE LAW

## PROHIBITIONS ON FOREIGN NATIONAL ELECTION ACTIVITIES

41. FECA prohibits any foreign national from "***directly or indirectly***" making a "***contribution*** or ***donation*** of money or other thing of value . . . in connection with a Federal, State, or local election" or an "***expenditure***, ***independent expenditure***, or ***disbursement for an electioneering communication***" in connection with any U.S. election. 52 U.S.C. § 30121(a)(1) (emphasis added).

42. "The prohibition on contributions by foreign nationals has its origin in legislation that predates the FECA, the 1966 amendments to the Foreign Agents Registration Act (80 Stat. 248). In 1976

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[53] Andy Kroll, "Cloak and Data: The Real Story Behind Cambridge Analytica's Rise and Fall," MOTHER JONES, May/June 2018 Issue, *available at* https://www.motherjones.com/politics/2018/03/cloak-and-data-cambridge-analytica-robert-mercer/.

[54] *Id.*

[55] *Id.* (emphasis added).

Congress incorporated into the FECA the foreign nationals provision, previously codified at 18 U.S.C. 613."[56]

43. In Advisory Opinions 1980-100 and 1982-10, the Commission permitted two corporations formed in Delaware, but wholly owned by foreign national individuals and corporations, to establish separate segregated funds pursuant to 52 U.S.C. § 30118[57] without violating the prohibition on foreign national contributions and expenditures—on the basis of the "representation that the individuals who will exercise decision-making authority with respect to Committee activities will not be foreign nationals." Ad. Op. 1980-100 at 2; *see also* Ad. Op. 1982-10 at 2 ("no . . . foreign national will participate in any way in the decision-making process with regard to making the proposed contributions or expenditures for state and local elections to political office").

44. In 1989, the Commission codified these advisory opinions into its regulations, "to clarify that ***foreign nationals may not participate in the election-related activities of others***, including decisions regarding contributions or expenditures by political committees, corporations, labor organizations or other persons."[58] The Commission explained: "[S]everal advisory opinions concerning corporations owned by foreign principals have relied upon representations by the requesters that no foreign national would participate in the separate segregated funds'

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[56] "Contributions and Expenditures; Prohibited Contributions," Final Rule and Explanation and Justification, 54 Fed. Reg. 48580, 48581 (Nov. 24, 1989), *available at* https://cdn.loc.gov/service/ll/fedreg/fr054/fr054225/fr054225.pdf.

[57] Previously 2 U.S.C. § 441e.

[58] "Contributions and Expenditures; Prohibited Contributions," Final Rule and Explanation and Justification, 54 Fed. Reg. 48580, 48581 (Nov. 24, 1989) (emphasis added) (citing Advisory Opinions 1980-100 and 1982-10), *available at* https://cdn.loc.gov/service/ll/fedreg/fr054/fr054225/fr054225.pdf.

decisions regarding contributions or expenditures."[59]

45. The Commission's final rule promulgated in 1989 provided:

> 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, or political committee, ***with regard to such person's Federal or nonfederal election-related activities***, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.[60]

46. In 2002, the Bipartisan Campaign Reform Act (BCRA) amended the statutory prohibition on foreign national election activities to "further delineate and expand the ban" by adding new terms including "indirectly," "donations" and "disbursements."[61] The Commission explained that, under FECA as revised by BCRA:

> Foreign nationals are ***prohibited from taking part in decisions*** about contributions and donations to any Federal, State, or local candidates or to, or by, any political committees or political organizations, and in decisions ***about expenditures and disbursements made in support of, or in opposition to, such candidates, political committees or political organizations***. Foreign nationals also are ***prohibited from involvement in the management of a political committee***, including a separate segregated fund, a nonconnected committee or the non-Federal accounts of these committees.[62]

47. To implement BCRA, the Commission amended its regulation prohibiting foreign nationals from participating in decisions regarding election-related activities to read:

> 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

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[59] *Id.*

[60] *Id.* at 48582 (setting forth former 11 C.F.R. § 110.4(a)(3)) (emphasis added).

[61] "Contribution Limitations and Prohibitions," Final Rule and Explanation and Justification, 67 Fed. Reg. 69928, 69940 (Nov. 19, 2002), *available at* https://www.gpo.gov/fdsys/pkg/FR-2002-11-19/pdf/02-28886.pdf#page=24.

[62] *Id.* at 69944 (emphasis added), *available at* . https://www.gpo.gov/fdsys/pkg/FR-2002-11-19/pdf/02-28886.pdf#page=24.

> 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*** in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee.

11 C.F.R § 110.20(i) (emphasis added).

48. In Advisory Opinion 2004-26, the Commission made clear that the prohibition on foreign nationals participating in the decision-making process of a political committee, 11 C.F.R § 110.20(i), operates separately and independently from the prohibition on foreign nationals making contributions to political committees, 11 C.F.R § 110.20(b).

49. In Advisory Opinion 2004-26, the Commission was asked by Congressman Gerald C. Weller and his fiancée Zury Rios Sosa, a Guatemalan citizen and foreign national with respect to the United States, whether Ms. Rios Sosa could participate as a volunteer in activities of Representative Weller's principal campaign committee and a nonconnected multicandidate committee of which Representative Weller was honorary chair. Ad. Op. 2004-26 at 1-2. Specifically, requestors asked whether Ms. Rios Sosa could:

> (1) attend Committee events; (2) participate in Committee events by speaking or by soliciting funds and support for the Committees; (3) participate in meetings with Representative Weller and Committee personnel regarding Committee events or political strategy; and (4) accompany Representative Weller to the fundraising and campaign events of other political committees, provided she has not made a contribution of her personal funds in order to attend?

Ad. Op. 2004-26 at 2.

50. The Commission began its analysis by noting that the request raised "***two separate legal issues***": (1) whether Ms. Rios Sosa's proposed activities would result in a foreign national contribution prohibited by 11 C.F.R § 110.20(b) or, instead, would come within the exception

from the definition of "contribution" for volunteer activities and (2) whether "Ms. Rios Sosa's proposed activities constitute participation by a foreign national in the decision-making of the Committees, which is prohibited by 11 CFR 110.20(i)[.]" Ad. Op. 2004-26 at 2.

51. The Commission concluded in Advisory Opinion 2004-26 that Ms. Rios Sosa's proposed campaign-related activities would be exempt from the 11 C.F.R § 110.20(b) foreign national "contribution" ban under the volunteer exemption. Ad. Op. 2004-26 at 2.

52. However, the Commission concluded in Advisory Opinion 2004-26 that some of Ms. Rios Sosa's proposed activities ***would violate the 11 C.F.R. § 110.20(i) prohibition on foreign nationals participating in decisions involving election-related activities***. The Commission explained:

> Such participation in decisions includes directing, dictating, controlling, or directly or indirectly participating "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 in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee." ***This broad prohibition encompasses foreign national involvement in the management of any political committee, and its decisions regarding its receipts and disbursements in connection with Federal and non-Federal elections.*** Therefore, Ms. Rios Sosa must not participate in Congressman Weller's decisions regarding his campaign activities. She must also refrain from managing or participating in the decisions of the Committees.

Ad. Op. 2004-26 at 3 (emphasis added) (internal citations omitted).

53. Similarly, the Commission in 2008-09 considered allegations made in multiple complaints that Sir Elton John had violated two separate provisions of federal law: (1) the prohibition on foreign national contributions to political committees and (2) the prohibition on foreign

national participation in decisions involving election-related activities. Sir Elton John had volunteered a fundraising concert performance for the Hillary Clinton for President committee, and the committee drafted and distributed a mass email promoting the concert, with Sir Elton John allowing and approving the committee's to use of his likeness and name in the committee's promotional email.[63]

54. In the matters of Sir Elton John, the Commission decided by a vote of 5-0 to approve the First General Counsel's Report and find no reason to believe that Sir Elton John violated the 11 C.F.R. § 110.20(b) prohibition on foreign national contributions or the 11 C.F.R. § 110.20(i) prohibition on foreign national participation in decision-making regarding election-related activities.[64] The First General Counsel's Report concluded that, because Sir Elton John had volunteered his performance, he had not made a "contribution" to the committee in violation of 11 C.F.R. § 110.20(b). And the First General Counsel's report further concluded that "Elton John's limited participation in the direct and indirect use of his likeness and name in the Committee's electronic mail does not constitute participation in the decision-making process of the Committee."[65]

55. The foreign national prohibitions established by 52 U.S.C. § 30121(a)(1) and 11 C.F.R. § 110.20 were challenged in *Bluman v. FEC*, 800 F. Supp. 2d 281 (D.D.C. 2011), though plaintiffs did not

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[63] *See, e.g.*, Complaint, *Judicial Watch v. Sen. Hillary Clinton, Hillary Clinton for President and Sir Elton John*, April 14, 2008, *available at* https://www.fec.gov/files/legal/murs/5995/29044230290.pdf.
[64] MURs 5987, 5995, 6015, Certification, February 12, 2009, *available at* https://www.fec.gov/files/legal/murs/5995/29044230355.pdf.
[65] MURs 5987, 5995, 6015, First General Counsel's Report, January 27, 2009, 10, *available at* https://www.fec.gov/files/legal/murs/5995/10044264623.pdf.

explicitly challenge 11 C.F.R. § 110.20(i). The three-judge court upheld the challenged laws, reasoning:

> It is fundamental to the definition of our national political community that ***foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government.*** It follows, therefore, that the United States 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.

800 F. Supp. 2d at 288 (emphasis added). The Supreme Court summarily affirmed the district court decision. *Bluman v. FEC*, 565 U.S. 1104 (2012).

## DEFINITIONS RELEVANT TO PROHIBITION ON FOREIGN NATIONAL PARTICIPATION IN COMMITTEE DECISION-MAKING

56. Federal law defines "foreign national" to include an "individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence," as well as any foreign principal, which includes a government of a foreign country, a foreign political party and any partnership, association or corporation "organized under the laws of or having its principal place of business in a foreign country." 11 C.F.R. § 110.20(a)(3) and 22 U.S.C. § 611(b).

57. The term "expenditure" is defined in FECA to mean "any purchase, payment, distribution, loan, advance, deposit, or gift or money or anything of value, made by any person for the purpose of influencing any election for Federal office." 52 U.S.C. § 30101(9)(A)(i) (emphasis added); *see also* 11 C.F.R. §§ 100.110–100.114.

58. Commission regulation defines "disbursement" to mean "any purchase or payment made by" a political committee or "[a]ny other person, including an organization that is not a political

committee, that is subject to the Act." 11 C.F.R. § 300.2(d); *see also* 11 C.F.R. § 110.20(a)(1) ("Disbursement has the same meaning as in 11 CFR 300.2(d).").

59. The term "contribution" is defined in FECA to mean "any gift, subscription, loan, advance, or deposit 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); *see also* 11 C.F.R. §§ 100.51–100.56.

60. Commission regulation defines "donation" to mean a "payment, gift, subscription, loan, advance, deposit, or anything of value given to a person, but does not include contributions." 11 C.F.R. § 300.2(e); *see also* 11 C.F.R. § 110.20(a)(2) ("Donation has the same meaning as in 11 CFR 300.2(e).").

## CAUSE OF ACTION

## COUNT ONE:

## CAMBRIDGE ANALYTICA, SCL GROUP, ALEXANDER NIX, NIGEL OAKES, ALEXANDER TAYLER, MARK TURNBULL, CHRISTOPHER WYLIE AND JOHN DOE(S) PARTICIPATED IN THE DECISION-MAKING PROCESS OF U.S. POLITICAL COMMITTEES CONCERNING EXPENDITURES AND DISBURSEMENTS IN VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT

61. Paragraphs 1 through 60 are incorporated herein.

62. Based on published reports, there is reason to believe that Cambridge Analytica, SCL Group, Alexander Nix, Nigel Oakes, Alexander Tayler, Mark Turnbull, Christopher Wylie and John Doe(s) are foreign nationals for the purposes of FECA.

63. Based on published reports, there is reason to believe that Cambridge Analytica, SCL Group, Alexander Nix, Nigel Oakes, Alexander Tayler, Mark Turnbull, Christopher Wylie and John Doe(s) participated in the decision-making of U.S. political committee clients of Cambridge

Analytica regarding expenditures and disbursements for political advertising, research, data analytics, polling, focus groups, message development, marketing, designing target audiences for advertisements and fund-raising appeals, and modeling voter turnout.

64. Based on published reports, there is reason to believe that Cambridge Analytica, SCL Group, Alexander Nix, Nigel Oakes, Alexander Tayler, Mark Turnbull, Christopher Wylie and John Doe(s) directly or indirectly participated in the decision-making process of political committee clients of Cambridge Analytica with regard to such political committee clients' federal election-related activities, including decisions concerning the making of expenditures and or disbursements in connection with elections for any federal office in 2014 and 2016 in violation of 52 U.S.C. § 30121(a)(1) and 11 C.F.R. § 110.20(i).

## PRAYER FOR RELIEF

65. Wherefore, the Commission should find reason to believe that Cambridge Analytica, SCL Group, Alexander Nix, Nigel Oakes, Alexander Tayler, Mark Turnbull, Christopher Wylie and John Doe(s) violated 52 U.S.C. § 30101, *et seq.* and Commission regulations, and conduct an immediate investigation under 52 U.S.C. § 30109(a)(2). Further, the Commission should determine and impose appropriate sanctions for any and all violations, should enjoin respondent(s) from any and all violations in the future, and should impose such additional remedies as are necessary and appropriate to ensure compliance with the FECA.

March 26, 2018

Respectfully submitted,

Common Cause, by
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## VERIFICATION

The complainants listed below hereby verify that the statements made in the attached Complaint are, upon their information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.

**For Complainants Common Cause and Paul S. Ryan**

Paul S. Ryan

Sworn to and subscribed before me this 26th day of March 2018.

Karen B. Watson
Notary Public

KAREN B. WATSON NOTARY PUBLIC EXP. 6-30-21 DISTRICT OF COLUMBIA