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CONFIDENTIAL MEMORANDUM

TO:	Rebekah Mercer, Steve Bannon, and Alexander Nix
FROM:	Mr. Laurence Levy
DATE:	July 22, 2014
RE:	Participation in US Elections

Privileged Attorney Client Legal Advice & Attorney Work Product

You have asked for guidance regarding the participation of Cambridge Analytica, LLP, a foreign corporation, and of foreign nationals in connection with United States elections for federal, state and local government office. This memorandum first explains the law, the regulations and some relevant precedents before offering specific guidance.

Legal & Regulatory Framework

We must start by reviewing the applicable law and regulations, which prohibits contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals, 2 USC. 4411 3, 36 USC 510. As detailed in the Federal Elections Commission ("FEC") Regulations at, 11 CFR §110.20 (b), "A foreign national shall not, directly or indirectly, make a contribution or a donation of money or other thing of value, or expressly or impliedly promise to make a contribution or a donation, in connection with any Federal, State, or local election." Of greater concern is 11 CFR §110.20 (i) "***Participation by foreign nationals in decisions involving election-related activities*. 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, donation, expenditures, or disbursements in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee. (emphasis added)"

The thrust of the law has always been to limit foreign nationals from funding activity that directly or indirectly impacts federal, state or local elections. The genesis was in the Foreign Agents Registration Act of 1938 ("FARA"), which was amended in 1965 to make it unlawful for an agent of a foreign principal to make or solicit contributions in connection with any U.S. elections. In 1975, post the Watergate scandal, the law was strengthened to prohibit any donations or contributions by a foreign national, not just agents of foreign governments. And the law clearly applies to any elections within the United States, not just federal elections. This long standing principle was reinforced and strengthened after a series of investigations and public scandals alleging attempts by Chinese nationals to influence U.S. elections, including the election of the President, using illegal contributions funneled through straw donors. In explaining the 2002 amendments to the law, the Explanation and Justification published at 67 Fed Reg 69946, indicated, "the addition of political organizations to the listing of decision-making entities and of donations and disbursements to the list of transactions about which decisions are made; all of these additions are needed to address fully the prohibition of the funding of State and local elections. **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 non-connected committee or the non- Federal accounts of these committees (emphasis added). **"**

The notion that it is legal to limit the participation of foreign nationals in United States elections, with regard to campaign activity, and not just to financial contributions, was reaffirmed in a recent case challenging the law prohibiting foreign nationals (Canadians) from making campaign contributions and expenditures, as well as making decisions regarding same. In Bluman v FEC 800 F. Supp 2d, 281,288 (D.D.C 2011), the court noted, "**We read these cases to set forth a straightforward principle: 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"(**emphasis added**)**. In 2012 the U.S. Supreme Court upheld the Bluman decision without further analysis. As an aside, I've read through the briefs and decisions in Bluman, both are almost entirely devoted to donations and expenditures of funds by foreign nationals, and only mention in passing campaign work by such individuals. The key connector appears to be the ability of campaign decision makers to expend federal dollars by making decisions about how to create and promote a campaign's message. Moreover, the §110.20 (i) was expressly challenged and upheld by the Court.

In addition, violations of the aforementioned provisions are 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.

Advisory Opinions & FEC Investigations

Given this background the Federal Election Commission has acknowledged that foreign nationals may volunteer personal services to a federal campaign, as long as the volunteer activity does not include fund raising from foreign nationals, or the management of a campaign. While virtually all of the published advisory opinions of the FEC, as well as the published investigations and administrative cases, involve the donation of money by a foreign individual, or corporation, usually through a PAC, there is one matter, Advisory Opinion 2004-26, which is directly on point. The candidate for federal office was engaged to a foreign national, who happened to be an elected official in her native country, he asked about the limits of her involvement in his campaign. The FEC advised that she could serve as an uncompensated volunteer, could attend meetings, rallies and debates, and even could solicit funds from U.S. citizens, but that she could not be involved in the management of the Committee. Specifically, she was not allowed to participate in decisions regarding election-related activities, including directing, dictating, controlling, or directly or indirectly participating "in the decision-making process of any person,…political committee, or political organization, in connection with elections for any Federal, State, or local office or decisions concerning the administration of a political committee." Ironically, the same opinion advised, "Ms. Rios Sosa may attend meeting with Representative Weller and Committee personnel regarding Committee events or political strategy. She may not, however, be involved in the management of the Committees." Presumably, the strategy sessions would not involve the expenditure of funds, which is barred by the regulations.

In Advisory Opinion 2007-22, the FEC advised a candidate that he could hire Canadian citizens as members of his campaign staff, could allow them to be volunteers, and could purchase material and advice from Canadian citizens and campaigns, as long as he paid fair market value and used properly raised federal funds. The opinion added an admonition regarding accepting campaign contributions from Canadians, but said nothing about management roles by foreign nationals. This is probably because the requestor only asked about the use of federal campaign funds, and generally described the services of volunteers and staff as involving low level functions, such as distributing leaflets and making phone calls.

One example of a matter that alleged both improper contributions and an alleged decision-making role by foreign nationals could be found in Matter Under Review 5998 ("MUR"). A MUR is the vehicle through which the FEC investigates complaints, and prosecutes violations of the federal election laws. In 2008 Judicial Watch filed a formal complaint alleging that the McCain for President Campaign and its treasurer violated the act by accepting illegal campaign contributions and illegal participation from Lord Jacob Rothschild and/or Nathaniel Philip Rothschild. In simplest terms the allegation was that a fundraiser held for McCain at Spencer House in London was done with the "kind permission" of the Rothschilds', which the complaint speculated meant they were involved in making donations and decisions. An investigation revealed that the McCain campaign paid the usual and going rate to rent Spencer House, only accepted donations from US citizens, and that neither Rothschild had a decision-making role in the event. This speculative complaint, involving a presidential candidate, and well-respected foreign nationals, took almost seven months to resolve, and required lengthy responses by the McCain campaign, and both Lord Jacob Rothschild and Nathaniel Philip Rothschild.

Cambridge Analytica, LLP

With this background we must look first at Cambridge Analytica, LLC ("Cambridge") and then at the people involved and the contemplated tasks. As I understand it, Cambridge is a Delaware Limited Liability Company that was formed in June of 2014. It is operated through 5 managers, three preferred managers, Ms. Rebekah Mercer, Ms. Jennifer Mercer and Mr. Stephen Bannon, and two common managers, Mr. Alexander Nix and a person to be named. The three preferred managers are all United States citizens, Mr. Nix is not. Cambridge is primarily owned and controlled by US citizens, with SCL Elections Ltd., ("SCL") a UK limited company being a minority owner. Moreover, certain intellectual property of SCL was licensed to Cambridge, which intellectual property Cambridge could use in its work as a US company in US elections, or other activities.

Cambridge is clearly a domestic company entitled to participate in US elections as a vendor, and, in certain instances, such as through an independent only expenditure committee, it could make federal election contributions. However, because Cambridge is currently being managed day to day by Mr. Nix, in order for Cambridge to engage in such activities Mr. Nix would first have to be recused from substantive management of any such clients involved in U.S. elections, and could only participate in ministerial functions, which could include overseeing billings, resource allocation within the company, etc. Such recusal, including the general construct of fire walls to ensure that only US citizens are making decisions about US election activity, and to separate working teams that are engaged in substantive work for two or more entities that are not permitted to coordinate their activities[1], will allow Cambridge to participate in the 2014 U.S. elections, if it can provide U.S. citizens,

[1] Coordination means made in cooperation consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee. This includes agents and common vendors.

or green card holders, to manage the work and decision making functions, relative to campaign messaging and expenditures.

Specific Questions regarding Foreign Nationals

Foreign Nationals may work in a U.S. political campaign, but may not play strategic roles including the giving of strategic advice to candidates, campaigns, political parties, or independent expenditure committees. On the other hand foreign nationals may act as functionaries that collect and process data, but the final analysis of said data should be conducted by U.S. citizens and conveyed to any U.S. client by such citizens. 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. In the alternative, one may make the argument that any analysis is simply a report, a tool that other campaign staff uses to formulate policy, campaign messages and determine expenditures. While one could formulate such an argument, without seeing the work product and analysis it is not possible to determine if such a "loophole" is workable. And the consequences of a mistake could be significant.

Staff may work as functionaries on multiple campaigns, as long as the activity doesn't raise a coordination issue. For example, the same staffer could work on any number of congressional and or state campaigns, but could not work on a congressional campaign and an independent expenditure committee involved in the same campaign. Another memorandum will go into more details regarding the issues of message and fundraising coordination.

The history of prohibiting foreign national's involvement in U.S. campaigns, be it for federal, state or local office, clearly distinguishes between citizens, and those with a green card, versus all others, broadly classified as foreign nationals. Therefore, the possession of an H1 visa or student visa is of no moment for this analysis.

Data Handling

There are no federal election regulations specific to the handling of data, or purchase of data, from foreign sources. It therefore would be legal to hold, and to process data outside of the United States. Raw data need not be kept in silos, or quarantined, as multiple campaigns could access such data, as long as the campaign pays a fair market value for access to, and the use of such data. However, to the extent the data is "influenced" by being manipulated by a certain campaign, and that record is available to other users, than the data might need to be quarantined. For example, if a candidate's campaign decides to create a sub-class of potential voters, say women over 60, and an independent expenditure group working in the same geographic area could discern that selection, it could be viewed as improper coordination. Therefore, the manipulation of the data should be kept separate, while the raw data may be maintained in one large data base.

The modeling of data gathered for each campaign should be kept separate and not available to other campaigns, unless they are permitted to share and pay allocable costs. By example, a senate candidate and a house candidate in the same state may want to analyze and model voting patterns of women over 60 in order to effectively communicate with such group. The two campaigns would share expenses of the work, and the resulting messaging, predicated on the reach, or exposure of the message; presumably the senate campaign would impact a larger audience in terms of data gathering and messaging, and therefore be required to pay a higher percentage of the expenditure.

Raw data collated and analyzed as part of Cambridge's business development may be used for marketing, or messaging, with any appropriate campaign, as long as the campaign pays fair market rates for the material it uses. Material appropriately provided purely as part of a sales pitch would not have to be paid for by a potential client. Obviously, material for marketing the business has a cost that is included as part of the overhead of Cambridge, while the usage of candidate specific data would be expected to be a consideration in determining a fair market value for services. The more relevant data Cambridge "owns & controls", the more effective it may be in marketing services against entities without such relevant data. Simply put, the existence of mailing lists and the like are the "coin of the realm" for "mail houses" that market to campaigns. Likewise, the larger the database Cambridge controls, along with its ability to demonstrate the value proposition for its analytical tools, the greater the likelihood Cambridge will be retained by political entities.

If Noah Robinson visited SCL, or Cambridge, to learn about the services available, I don't see such a "sales meeting" creating any particular prohibition on going forward with a future contract with the Robinson campaign. With the usual caveat that any decision maker must be a U.S. citizen or green card holder, while lower level staff may be foreign nationals. 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 advice 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.

Contacting outside professionals for guidance, be it legal or strategic, should be done by a citizen employee or volunteer for a campaign. It should be able to be "filtered" through Cambridge management for the purposes of billing and cost control, but the substance is best

handled by a person or person involved with a specific campaign that has a specific issue to address. To the extent questions are of a general nature, having to do with the management and marketing of Cambridge, any appropriately designated manager or executive should be permitted to manage the professional relationship.

In summation, the prohibition against foreign nationals managing campaigns, including making direct or indirect decisions regarding the expenditure of campaign dollars, will have a significant impact on how Cambridge hires staff and operates in the short term.