IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, v. CONCORD MANAGEMENT AND CONSULTING LLC Defendant.	CRIMINAL NUMBER: 1:18-cr-00032-2-DLF

DEFENDANT CONCORD MANAGEMENT AND CONSULTING LLC'S MOTION FOR A SUPPLEMENTAL BILL OF PARTICULARS

Pursuant to Federal Rule of Criminal Procedure 7(f), Defendant Concord Management and Consulting LLC ("Concord" or "Defendant"), through counsel, respectfully moves for a supplemental Bill of Particulars. In support of its Motion, Concord states as follows:

I. INTRODUCTION

In sum and substance the Indictment contains generally described allegations against Concord that it funded and oversaw the operations of co-defendant Internet Research Agency, LLC ("IRA"). *See* Indictment ¶¶ 3, 11, 12, ECF No. 1. The Indictment identifies only one individual associated with Concord, co-defendant Yevgeniy Prigozhin. *Id*. ¶ 12. The Bill of Particulars provided by the government names one unindicted co-conspirator named "SP," who may have worked for Concord. *See* Gov't's Bill of Particulars (Redacted) ¶ 1, ECF No. 176 (the "BOP").[1]

[1] The Bill of Particulars also names five unindicted co-conspirators who do not appear to be real people, but rather names associated with email addresses; as well as one "unindicted co-conspirator" who is actually an *indicted* defendant.

In this one of a kind, never before brought case, the Court ordered the government to provide a bill of particulars to identify: (1) the statutory and regulatory requirements that the defendants allegedly conspired to impair; (2) each category of expenditures the government intends to establish required disclosure to the Federal Election Commission ("FEC"); and (3) each category of activities that the government intends to establish triggered a duty to register under the Foreign Agents Registration Act ("FARA"). *See* Mem. Op. & Order at 12, May 24, 2019, ECF No. 136 ("May 24 Opinion"). The Court denied Concord's request that the government identify any conspirators who were required to report expenditures to the FEC or register as a foreign agent with DOJ, reframing the request as seeking identification of which entities or individuals allegedly violated FECA and FARA. *See id*. at 13.[2] The Court equated that request to one seeking the identity of which conspirator committed each act alleged in the Indictment, which the Court denied based on its conclusion that "[t]he detailed allegations in the indictment, combined with the list of co-conspirators the government plans to introduce at trial and the additional relief the Court orders [in its Memorandum Opinion and Order], provide Concord with more than enough information to conduct its own investigation of the charges against it." *Id.* at 8.

For the reasons set forth below, the government's Bill of Particulars is deficient because it does not identify which defendant(s) failed to make the allegedly required filings with the FEC and DOJ. This is not the normal case involving a defendant who engaged in proscribed conduct where the government can argue that a bill of particulars is not necessary because each defendant knows what he or she did, such that defense counsel could determine whether that conduct was illegal. In contrast, here the Court has determined that the Indictment alleged violations of FECA

[2] This portion of the Court's Opinion cites in error to section II.B, which should have been III.B, wherein the Court denied Concord's request that the government identify which defendant committed each act alleged in the Indictment.

and FARA's disclosure requirements, which are alleged ***failures to act***. *See id*. at 11 (noting that "the Court held that while the government was not necessarily *required* to allege FECA and FARA violations to establish a defraud-clause conspiracy, the indictment *did* allege such violations as one of several forms of deceptive conduct aimed at the United States") (emphasis in original); *id*. ("it will be difficult to tie the deceptive acts alleged in this case to FEC's and DOJ's administration of FECA's and FARA's disclosure requirements if those requirements did not actually apply to the conspirators"). The Bill of Particulars confirms that these alleged violations involve a failure to report or register. *See* BOP ¶ 2 (identifying FECA reporting requirement and FARA registration requirement); ¶ 3 (identifying FECA "registration requirement"); ¶ 4 (identifying FARA "reporting requirement").[3] As discussed below, there is no possibility from the Indictment, the cited statutes or regulations, or the Bill of Particulars that Concord can determine who allegedly failed to act.

Given the fact that the alleged failures to act are an essential element of the conspiracy charge, the government must prove who specifically failed to act. In these circumstances it is not possible for Concord to adequately prepare for trial without knowing that information, and withholding that information from Concord until trial will result in prejudicial surprise. *See United States v. U.S. Gypsum Co.*, 37 F. Supp. 398, 402 (D.D.C. 1941) ("The proper office of a bill of particulars in criminal cases is to furnish to the defendant further information respecting the charge stated in the indictment when necessary to the preparation of his defense, and to avoid prejudicial

[3] In the Bill of Particulars, the government refers to a "registration requirement" in FECA, BOP ¶ 3, and to "FARA's reporting requirement." BOP ¶ 4. FECA does not use the term "register" and the statutory section cited by the government is titled "Reporting Requirements." 52 U.S.C. § 30104. Similarly, FARA does not use the term "report" and the statutory section cited by the government is titled "Registration statement." 22 U.S.C. § 612. Despite the confusing language used by the government in the BOP, Concord will refer to FECA's reporting requirement and to FARA's registration requirement.

surprise at the trial."). Moreover, depending upon who the government identifies as having failed to act, the Indictment may fail as a matter of law, or may form the basis of a pre-trial motion *in limine* limiting the government's ability to present certain theories of liability to the jury. *See United States v. Schiff*, 602 F.3d 152, 159, 161 (3d Cir. 2010).

A. The Court's Previous Findings and the Government's Changed Theory of Liability

The Special Counsel initially advised the Court that the Indictment ***did not*** allege that any defendant was required to file a report with the FEC or to register with the Department of Justice ("DOJ") under FARA. *See* Gov't's Resp. Def's Mot. *In Camera* Review of Grand Jury Materials 3, ECF No. 20 ("The Indictment does not allege any violation, or even cite to specific statutory provisions, of FECA, FARA, or the substantive offense of visa fraud."). *See also* June 15, 2018 Hr'g Tr. 8:5-7 ("the elements of [FECA and FARA] are not an ingredient in this case); 8:14-19 (stating that a § 371 defraud clause conspiracy is "a different crime because it's not saying that they necessarily were required to file with the FEC or that they were required to register with the Department of Justice"); 12:1-2 (explaining that the allegations involving fraud on the State Department are not different from the allegations of fraud on the FEC or DOJ because "it's not a question of whether the defendant was violating the substantive offense"). Instead the Special Counsel argued that it was enough to prove its case if use of deceptive acts by the Defendants impeded the regulatory functions of the FEC or DOJ. *See id.* at 9:11-13. The Special Counsel repeated this position in its Opposition to Defendant's Motion to Dismiss. Opp'n Def.'s Mot. Dismiss 11, ECF No. 56 (arguing that "the government will not have to ultimately prove that any particular defendant's conduct violated, for example, FECA or FARA. Rather, the government will only have to prove that the defendants knowingly and intentionally engaged in deceptive acts

that interfered with the regulatory functions of the FEC or DOJ in a way that precluded those entities from ascertaining *whether* those substantive statues were violated.") (emphasis in original).

Later however, in response to questioning by the Court, the Special Counsel conceded that "when the only deceptive acts the government has alleged are a failure to disclose or a failure to report, well, then, you are going to have to show a duty to disclose or a duty to report." Oct. 15, 2018 Hr'g Tr. 47:23-48:2. The Special Counsel, then assisted by the United States Attorney for the District of Columbia and the United States Department of Justice, reframed this new theory by claiming that the indictment ***did allege*** that defendants had a legal duty to register and file reports with the FEC and DOJ. *See* Gov't's Suppl. Br. Opp'n Def.'s Mot. Dismiss 3-4, ECF No. 69. Throughout this back and forth, the Special Counsel never identified which defendant(s) allegedly failed to file and/or register.

The Court was correctly skeptical of these positions from the outset. *See* June 15, 2018 Hr'g Tr. 8:20-9:1. In fact, in denying the Motion to Dismiss the Court stated, ". . . it is difficult to see how the defendant's deception would impair agencies' ability to 'administer' disclosure requirements if those requirements did not apply to the defendants' conduct." Mem. Op. at 15, Nov. 15, 2018, ECF No. 74 ("Nov. 15 Opinion"). And in ordering the government to provide a bill of particulars the Court again stated, "it will be difficult for the government to establish that the defendants intended to use deceptive tactics to conceal their Russian identities and affiliations from the United States if the defendants had no duty to disclose that information to the United States in the first place." May 24 Opinion at 12.

Importantly, the Court has interpreted the Indictment as alleging a failure to report as opposed to making prohibited expenditures. *See* Nov. 15 Opinion at 5 ("Although [paragraph 25] also mentions FECA's ban on foreign expenditures, it focuses on FEC's administration of FECA's

'reporting requirements' . . ."); *id.* (paragraph 9 of the indictment—"the heart of the conspiracy charge"—"alleges that the defendants conspired to impair the functions of the FEC, DOJ, and DOS '*in administering federal requirements for disclosure* of foreign involvement in certain domestic activities") (emphasis in original); *id*. 6 ("In sum, the text and structure of the indictment reveal that the government functions targeted by the conspiracy are alleged solely to be the 'administration' of 'federal requirements for disclosure'") (alterations omitted).[4] Moreover, the Court has determined that "a failure to disclose information can only be deceptive—and thus serve as the basis for a § 371 violation—if there is a legal duty to disclose the information in the first place." *Id*. 10. And the Court has emphasized that because the Indictment alleges a conspiracy to impair the FEC and DOJ's functions of "administering federal requirements for disclosure," "the government may ultimately have to prove that the defendants agreed to a course of conduct that, if carried out, would require disclosure to the FEC or DOJ." *See* May 24 Opinion at 11 (citing Nov. 15 Opinion at 15-16).

B. The Bill of Particulars

With respect to the FEC, the government now maintains that funds spent for independent expenditures for internet advertisements and to promote political rallies in the United States, (1) triggered a requirement that unidentified conspirators submit reports under 52 U.S.C. § 30104(c); and (2) violated the foreign national expenditure ban in 52 U.S.C. § 30121. *See* BOP ¶ 2. With respect to the FARA, the government now maintains that the travel by certain conspirators to the United States and the use of the internet triggered a requirement that unidentified conspirators register under FARA. *Id.* The Bill of Particulars is not consistent with what the Special Counsel

[4] The Court noted that if alleged independent expenditures violated FECA then those expenditures could be relevant to establishing "defendants' motive for failing to submit reports as required." Nov. 15 Opinion at 12 n.4.

told the Court with respect to Concord's Motion to Dismiss the Indictment, and as such appears to be "a game of musical chairs with their pursuit of changing legal theories . . . ." *Schiff*, 602 F.3d at 161.[5]

The Bill of Particulars severely limited the scope of the alleged unlawful conduct from what originally was alleged in the Indictment by the Special Counsel. The government now concedes that only independent expenditures—which by their definition and through case law are those that expressly advocate the election or defeat of a specific candidate—could have triggered reporting to the FEC. BOP ¶ 3.[6] The government leaves unsaid specifically which conspirator was required to file a report with the FEC and what that report was supposed to contain. And as to FARA, the government concedes that the only conduct that would have required FARA registration was certain conspirators' travel to the United States and unspecified social media activity. *Id*. ¶ 4. Again the government leaves unsaid which conspirator failed to register under FARA and, crucially for FARA purposes, on behalf of what foreign principal such defendant was allegedly acting. Depending on who the government now claims was required to register under FARA and file under FECA, the Indictment may fail as a matter of law. For that reason, the Court should compel the government to supplement the Bill of Particulars and identify the conspirators

[5] Given the fact that the Special Counsel's prosecutors who indicted the case have withdrawn and new prosecutors from the United States Attorney's Office and the Department of Justice have appeared, there is a serious question whether these new prosecutors have changed the theory of liability from what was presented to the Grand Jury.

[6] In the allegations relating to actual conduct by the Defendants, the Indictment refers only to "expenditures," not independent expenditures. *See, e.g.,* Indictment ¶ 6 ("Defendants made various expenditures to carry out those activities"); ¶ 7 ("including by making expenditures in connection with the 2106 U.S. presidential election without proper regulatory disclosure"); ¶ 48 ("Defendants and their co-conspirators did not report their expenditures to the Federal Election Commission"). The only reference in the Indictment to "independent expenditures" are in those paragraphs that describe the regulatory scheme. *See id*. ¶ 25.

the government intends to establish were required to report information to the FEC and register as a foreign agent under FARA, and on behalf of which foreign person or entity they acted.

II. LAW & ARGUMENT

A. A Supplemental Bill of Particulars is Required for This Alleged Crime of Omission

Crimes of omission are unique because they punish based upon the *absence* of conduct, rather than the *presence* of affirmative criminal activity. *See, e.g.*, *Lambert v. California*, 355 U.S. 225, 228 (1957) (reversing conviction for violation of registration law, noting that "conduct that is wholly passive—mere failure to register" . . . "is unlike the commission of acts, or the failure to act under circumstances that should alert the doer to the consequences of his deed"). As such, defendants who violate such laws may be completely "unaware of any wrongdoing" and may properly claim that they had no knowledge of a violation. *Id.* (recognizing an exception to the rule that ignorance of the law is not an excuse for criminal conduct where the violation consists of "wholly passive" conduct by a person who is "unaware of any wrongdoing"). A lack of notice regarding potential criminal penalties for doing nothing implicates fundamental due process rights. *Lambert*, 355 U.S. at 228. Put another way, crimes of omission often leave defendants in the dark about the nature of their alleged criminal conduct and deprive them of due process rights.

As this Court recognized and the government confirmed in its Bill of Particulars, the Indictment alleges, and the government intends to prove at trial, failures to act under FECA's reporting and FARA's registration requirements as part of the "deceptive conduct" underlying the § 371 defraud-clause conspiracy. *See* May 24 Opinion at 11; BOP ¶¶ 2-4. These alleged violations are prime examples of the "wholly passive conduct" addressed in *Lambert*, involving only omissions, not affirmative conduct. As such, the special due process considerations recognized in *Lambert* and subsequent cases—notice and a recognition that the defendant may be ignorant of the

law—underscore why a supplemental Bill of Particulars identifying precisely who is alleged to have been subject to these duties and failed to act is needed. Specifically, where, as here, *the co-conspirators themselves* may be "unaware of any wrongdoing," *Lambert*, 355 U.S. at 228, simply identifying the disclosure requirements and categories of expenditures or activities that allegedly triggered them does not provide Concord with sufficient information to conduct its own investigation of the charges against it and to prepare a defense. *See* May 24 Opinion at 8.

This request is not seeking a preview of the government's evidence, as the Court warned against. *Id*. Rather, Concord is seeking clarification of the Indictment and the Bill of Particulars so it can understand the charges against it and prepare a defense. *Id*. 3 (citing *United States v. Butler*, 822 F.2d 1191, 1193 (D.C. Cir. 1987) and *United States v. Lorenzana-Cordon*, 130 F. Supp. 3d 172, 174 (D.D.C. 2015)).

B. It is Not Possible for Concord to Determine Who Was Required to File Any Report with the FEC

1. The Arguably Independent Expenditures

The relevant statute states that it is unlawful for foreign nationals to make "an expenditure, independent expenditure, or disbursement for an electioneering communication." 52 U.S.C. § 30121(a)(1)(C).[7] However, this Court has limited the application of this statute only to

[7] The FEC has interpreted "electioneering communication" to only modify "disbursement." 67 Fed. Reg. 69928, 69944 (Nov. 19, 2002); *see also* 11 C.F.R. § 110.20 (2019). This interpretation is critical because if "electioneering communication" modifies "expenditure" and "independent expenditure," then only broadcast, cable or satellite communications within sixty days of a presidential election would be covered. *See* 11 C.F.R. § 100.29 (defining electioneering communication). The FEC is wrong for two reasons. First, in 11 C.F.R. § 110.20 (e) and (f), the FEC has broadened the scope of the statute by creating two prohibitions with respect to disbursements instead of the one contained in the statute. Second, while the rule of the last antecedent would normally support the FEC's interpretation, the rule is not absolute and can be overcome by other indicia of meaning. *See Lockhart v. United States*, 136 S.Ct. 958, 962 (2016). Here, the FEC's own website defines "disbursement" as a "broader term that covers both expenditures and other kinds of payments (those not made to influence a federal election)." https://www.fec.gov/help-candidates-and-committees/making-disbursements/ Since by definition

expenditures or independent expenditures that expressly advocate the election or defeat of a specific candidate. *See Bluman v. F.E.C.*, 800 F. Supp. 2d 281, 284 (D.D.C. 2011). Expenditures or independent expenditures by foreign nationals for issue advocacy are not prohibited. *See id*; FEC's Motion to Dismiss or Affirm 21, 23, *Bluman v. FEC,* No. 11-275 (Nov. 14, 2011), *available at* https://www.justice.gov/sites/default/files/osg/briefs/2011/01/01/2011-0275.resp.pdf.[8]

A person who makes an independent expenditure is only required to file reports with the FEC listing contributors if the aggregate amount of the value of the independent expenditures is in excess of $250 in a calendar year. *See* 52 U.S.C. § 30104(c)(1). As recently as 2018, the FEC maintained and argued in this Court that § 30104(c)(1) was "ambiguous," "could be read in multiple ways," and "caused confusion" about whether it required disclosure of donors where the donation was not expressly linked to the independent expenditure. *See Citizens for Responsibility & Ethics in Washington v. FEC*, 316 F. Supp. 3d 349, 395, 396, 403 (D.D.C. 2018) (holding that FEC regulation interpreting the statute was invalid because it improperly required an express link between the independent expenditure and the donation for reporting purposes).[9]

To qualify as an "independent expenditure" for either reporting purposes or the foreign national prohibition it must expressly advocate the election or defeat of a clearly identified candidate. *See* 52 U.S.C. § 30101(17). "Clearly identified" means that the candidate's name or

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an "electioneering communication" contains the name of a specifically identified candidate for federal office, 11 C.F.R. § 100.29(a), a "disbursement for an electioneering communication" results in a modifier that contracts the noun, rendering the phrase meaningless.

[8] Foreign nationals are also permitted to provide volunteer services to a campaign. *See* Ex. A, FEC, Advisory Op. 2014-20 (Mar. 19, 2015).

[9] The instructions in the FEC regulations are even more confusing, containing seemingly conflicting instructions for various levels of expenditures. *See* 11 C.F.R. § 109.10, How do political committees and other persons report independent expenditures?

photograph appears or the identity is apparent by unambiguous reference. *See id* § 30101(18). "Expressly advocating" means that certain key words such as "vote for," "re-elect," "vote against," appear, and/or when taken as a whole, the words could only be interpreted by a reasonable person as containing advocacy for or against a clearly identified candidate. *See* 11 C.F.R. § 100.22 (2019). The Supreme Court has recognized that the distinction between campaign advocacy and issue advocacy "may often dissolve in practical application." *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 456-457 (2007).

Here, from what can be determined from the discovery produced by the government, the aggregate amount spent on social media advertisements that even arguably meet the definition of independent expenditures was $2,930.[10] Specifically, the discovery provided by the government contains 104 paid advertisements on Facebook and Instagram that mention or depict a clearly identified candidate through the date of the 2016 presidential election.[11] Only thirteen of these

[10] Each advertisement was paid for by an individual purchaser in Russian rubles. *See* Ex. B, Testimony of Colin Stretch, General Counsel, Facebook at 5, *Hr'g Before the United States Senate Committee on the Judiciary Subcommittee on Crime and Terrorism*, 115th Cong. (Oct. 31, 2017). Facebook and Instagram utilized technology that made them aware that the payments were coming from accounts located in Russia. *Id.* As such, if these independent expenditures were contrary to law, Facebook and Instagram are equally liable. *See* 11 C.F.R. § 110.20(h)(2) (prohibiting any person from knowingly providing substantial assistance in the making of a prohibited independent expenditure). For purposes of this motion, undersigned counsel has converted the amount paid in rubles to U.S. dollars according to the exchange rate in effect as of the start date of the ad.

[11] The date of the election is the last day any of the alleged advertisements could constitute an independent expenditure that expressly advocates the election or defeat of a clearly identified candidate. FEC regulations define when an individual becomes a candidate for federal office based on the amount of contributions the individual has received or expenditures made on his or her behalf, which must be "aggregated on an election cycle basis" and "[t]he election cycle shall end on the date on which the general election for the office or seat the individual seeks is held." 11 C.F.R. § 100.3.

advertisements are specifically alleged in the Indictment. *See* Indictment ¶ 50.[12] Based on the information provided by the government in discovery, the total amount allegedly spent for these thirteen advertisements was the ruble equivalent of $454.55.

The analysis required by FEC to determine whether an advertisement expressly advocates the election or defeat of a clearly identified federal candidate under FECA is highly fact specific. *See, e.g.,* Ex. C, FEC, Advisory Op. 2012-27 (Aug. 24, 2012). To qualify as express advocacy the advertisement must contain Federal electoral references. *See* Ex. D, FEC, Advisory Op. 2012-11 (May 8, 2012) (concluding that Facebook advertisement relating to gun control that referenced President Obama by name with no Federal electoral references was not express advocacy under 11 C.F.R. § 100.22). For example, the FEC determined that advertisements mentioning a candidate's name and criticizing that candidate were not express advocacy where they did not explicitly encourage or discourage a person to vote for that candidate. *See* Ex. C, Advisory Op. 2012-27 at 2-4 ("Nydia Velazquez. Ethically challenged" and "Don't Trust Harry Reid" are not express advocacy).

The FEC had the opportunity to make determinations whether the advertisements allegedly posted by IRA constituted express advocacy, and apparently declined to do so. In particular, Common Cause filed a complaint with the FEC in September 2017 alleging that prohibited political advertisements were posted to Facebook by accounts operating out of Russia and constituted violations of FECA.[13] *See* Ex. E, Common Cause Complaint. The FEC has taken no

[12] The Indictment also refers to certain advertisements used to promote political rallies, some of which relate to a clearly identified candidate. Indictment ¶¶ 51-56, 60, 63, 66, 71, 75, 85. As explained further below, those advertisements are included in this analysis.

[13] 52 U.S.C. § 30109(a)(2) (2018) provides that "[i]f the Commission, upon receiving a complaint . . . or on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities, determines, by an affirmative vote of 4 of its members, that it has reason to believe that a person has committed, or is about to commit, a violation of this Act . . ., the Commission

action on this complaint. *See* FEC Matters Under Review Database ("MUR") (last checked on Aug. 19, 2019). So while it is clear that the Special Counsel, the Department of Justice, and the Grand Jury have no authority to determine whether any particular advertisement constitutes express advocacy, it remains entirely unclear who will make that determination in this case. Concord's Sixth Amendment right to a jury trial gives it the right to demand that a jury find it guilty of all elements of the crime with which it is charged. *See United States v. Gaudin*, 515 U.S. 506, 511 (1995). There has been no discovery provided to date regarding the FEC's position on any of the advertisements alleged in the Indictment or otherwise identified in the discovery.[14]

Moreover, putting aside whether any of the foreign defendants were even aware of the FEC statute and regulations, and the government has provided no discovery that they were, not even the FEC is capable of determining whether some advertisements constitute express advocacy. *See,*

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shall . . . notify the person of the alleged violation. . . . The Commission *shall* make an investigation of such alleged violation . . . ." *Id.*

[14] Some backers of new election security legislation have already concluded that advertisements alleged to have been made by defendant Internet Research Agency were in compliance with FECA. Michigan Congresswoman Elissa Slotkin, the author of the PAID AD bill, recently told constituents "[i]f you haven't seen it, you should see some of the fake, Russian-produced social media ads that were targeted at Michigan. They are groups pretending to be Muslim-American groups, saying terrible things to ramp up hatred and discord. There are groups pretending to be African-American groups, sowing absolute racial war and discrimination, they are horrible. They have ads that show Hillary Clinton along with the devil, and Donald Trump along with Jesus[.] And I want to be honestly clear about this: that is totally legal in our current political environment." *See* Rep. Elissa Slotkin, Live Facebook feed from town hall at Sexton High School, Lansing, Mich., Facebook.com (June 6, 2019), www.facebook.com/RepElissaSlotkin/videos/vb.2202052983148029/301447767398161. In an op-ed endorsing the PAID AD bill, the Editorial Board of *The Washington Post* wrote last month that "Russia's Internet Research Agency purchased more than 3,500 [advertisements] on Facebook ahead of the 2016 election, the platform says — and, according to researchers, most were legal." *See* Editorial Board, *Americans deserve to know who pays for political ads. But is that enough?*, The Washington Post (Jul. 2, 2019), www.washingtonpost.com/opinions/is-disclosure-enough-to-keep-foreign-interference-out-of-political-ads/2019/07/02/863a533e-9852-11e9-8d0a-5edd7e2025b1_story.html.

e.g., Ex. C, FEC, Advisory Op. 2012-27 at 4-5 (the FEC could not determine whether certain advertisements were express advocacy: an advertisement naming Nancy Pelosi and President Obama and attacking "ObamaCare;" an advertisement mentioning Nancy Pelosi and her alleged failure to support express delivery of overseas military ballots). *See also* Ex. D, FEC, Advisory Op. 2012-11 at 7-8 (the FEC could not determine whether certain advertisements were express advocacy: an advertisement naming President Obama and attacking his position on environmental policy and gun rights). *See also Nat'l Org. for Marriage v. McKee*, 649 F.3d 34, 52 (1st Cir. 2001) (recognizing that "[t]he division between pure 'issue discussion' and 'express advocacy' of a candidate's election or defeat is a conceptual distinction that has played an important, and at times confounding, role in a certain set of modern Supreme Court election law precedents").[15]

Despite the nuanced analysis the FEC routinely engages in to determine whether an advertisement constitutes express advocacy, it is clear that many of the advertisements listed in ¶ 50 of the Indictment are not express advocacy and as such are not independent expenditures. For example, the advertisements alleged to have been posted on April 19, 2016, June 7, 2016, July 20, 2016, and August 10, 2016 are not express advocacy because they contain no reference to an election or voting. According to the discovery produced to date, the arguably express advocacy advertisements alleged in ¶ 50 cost as follows: April 6, 2016 ($27.83); April 7, 2016 ($44.02);

[15] Congress has declined to take action on a bill explicitly prohibiting foreign nationals from paying for internet advertising. *See* Ex. F, PAID AD Act, H.R. 2135, 116th Cong. (2019). The FEC has similarly declined to issue a final rule regarding required disclaimers for internet advertising. *See* Ex. G, https://www.fec.gov/updates/nprm-internet-communication-disclaimers-definition-public-communication-2018/. *See* also Ex. H, Mem. from FEC Chair Ellen L. Weintraub to Commission Secretary (June 13, 2019).

May 10, 2016 ($10.57); May 19, 2016 ($2.47); May 24, 2017 ($213.01); June 30, 2016 ($23.40); August 4, 2016 ($7.58); October 14, 2016 ($7.93); and October 19, 2016 ($0.00).[16]

Further, the FEC has declined to take action even on direct contributions by foreign persons to a presidential campaign in the 2016 election cycle where the amounts in question were *de minimis*. *See, e.g.,* Ex. I, FEC First General Counsel's Report, MUR 7205, at 7. According to the discovery in this case, only seven advertisements cost in excess of U.S. dollar equivalent $100, and those advertisements accounted for U.S. dollar equivalent $1,585; that is, over half of the entire amount of the arguably independent expenditures for advertisements. None of these seven advertisements contain any of the magic words regarding voting required by the FEC. The allegation in the Indictment at ¶ 35 claiming that IRA spent thousands of dollars each month to purchase advertisements is at best misleading and at worse demonstrably false because the discovery indicates that the many of the advertisements took place after the 2016 presidential election or did not involve any clearly identifiable candidate.[17]

The Indictment further alleges that the defendants purchased advertisements on Facebook and Instagram to promote rallies in the United States. Indictment ¶¶ 51-56, 60, 63, 66, 71, 75, 85. According to the government, this conduct also required reporting to the FEC. BOP ¶ 3. The 104 candidate-specific advertisements referred to above include a total of 25 advertisements to promote rallies, costing approximately $1,677.30, more than half of the $2,930 spent on candidate-specific advertisements.

[16] Notably, for most of these advertisements it is not the text cited in ¶ 50 of the indictment that could arguably constitute express advocacy, but some other portion of the advertisement, again raising a question about legal instructions provided to the Grand Jury.

[17] The Court relied on this allegation in denying Defendant's Motion to Dismiss the Indictment. *See* Nov. 15 Opinion at 13.

Finally, with respect to rally-related payments that could arguably constitute independent expenditures, the Indictment alleges that the defendants paid U.S. persons to participate in or perform certain tasks at rallies held in the U.S. *See* Indictment ¶¶ 54-56, 62, 64, 72, 73, 77, 82, 84.[18] The amount of money allegedly spent for political rallies where it can be determined from the discovery that some payment was actually made is approximately $1,833.00.

2. It is Not Possible for Concord to Determine Who Was Required to File Any Report with the FEC

The BOP now requires Concord to determine on its own who was required to file a FEC Form 5.[19] It cannot be Concord because the Indictment does not allege that Concord paid directly for any of the advertisements or rallies, but instead funded IRA. As such, it could only be IRA or the individuals allegedly working at IRA who allegedly purchased the advertisements and spent money on rallies. It is clear that any such filing would not have required the filer to include any information about Concord because at most Concord would be considered under FECA to be a donor to IRA, and there is no allegation that the alleged payments from Concord to IRA were for specific independent expenditures. *See Citizens*, 316 F. Supp. 3d at 394 (FEC maintained as late as 2018 that filers were not required to identify specific donors unless the donation was earmarked for a specific independent expenditure).

Further, as a matter of law, failure to file a Form 5 would constitute a violation of FECA only if IRA or an individual allegedly employed by IRA knew that a Form 5 was required and

[18] The Bill of Particulars references only "payments to promote political rallies in the United States." BOP ¶ 3. It is unclear whether the government considers these payments to individuals to participate in or perform certain tasks in connection with the rallies to be for "promotion" of the rallies, but for the sake of argument Concord is including information about these payments.

[19] *See* Ex. J, FEC Form 5 and Instructions, and note that the form contains no field for the filer to indicate she or he lives in a foreign country.

willfully failed to file it. *See* 52 U.S.C. § 30109(d). This means that the responsible conspirator would have had to know that of the millions of rubles equating to hundreds of thousands of dollars of Concord's money allegedly spent by IRA, at worst approximately $2,900 were spent for advertisements and $1,800 were spent for rallies that the FEC could possibly conclude were independent expenditures for express advocacy. Without knowing precisely who the government intends to establish was required to report to the FEC, it is impossible for Concord to conduct its own investigation of the conspiracy charge against it. *See* May 24, 2019 at 8.

3. No Defendant Was Obligated To Self-Incriminate

To the extent the government can establish that any individual actually had a duty to report to the FEC, Concord is entitled to the identity now— before trial—in order to determine whether there is a defense available under the Fifth Amendment. "Whenever the Court is confronted with the question of a compelled disclosure that has an incriminating potential, the judicial scrutiny is invariably a close one." *California v. Byers*, 402 U.S. 424, 427 (1971). The Supreme Court has established certain criteria for determining when the threat of self-incrimination from a disclosure statute is so offensive to the mandate of the Fifth Amendment as to render the statute unconstitutional. In *Albertson v. Subversive Activities Control Bd.*, 382 U.S. 70, 86 (1965), the Supreme Court held unconstitutional a statute which required Communist Party members to register, thereby subjecting themselves to prosecution for being members of the Communist Party. This holding was based on the fact that registration would involve an admission of a crucial element of a crime. Later Supreme Court cases used this standard in striking down various disclosure statutes. *See Leary v. United States*, 395 U.S. 6 (1969) (statute requiring registration of persons who deal in marijuana); *Marchetti v. United States*, 390 U.S. 39 (1968) and *Grosso v. United States*, 390 U.S. 62 (1968) (statutes requiring registration by gamblers); *Haynes v. United*

States, 390 U.S. 85 (1968) (statute requiring registration of certain firearms). *See also Communist Party v. United States*, 331 F.2d 807 (D.C. Cir. 1963) (holding that criminal punishment may not be imposed for failure of organization's officers to make a required disclosure on the organization's behalf). In sum, where disclosures are required of a select group that is inherently suspect of engaging in criminal activity, and those disclosures would necessarily provide the basis for a criminal prosecution, then any such required disclosure is unconstitutional. *See United States v. Dichne*, 612 F.2d 632, 640 (2d Cir. 1980).

This principle applies here. If a foreign national reported independent expenditures advocating for or against a candidate such disclosure would be an admission to, and form all of the elements of, a crime under FECA. *See* 52 U.S.C. § 30121(a)(1)(C). Much like the cases above, the reporting requirement advocated by the government here is, in essence, a compelled disclosure that violates the Fifth Amendment protections, *see Albertson*, 382 U.S. at 86, and should be found to be unconstitutional. *Dichne*, 612 F.2d at 640.

If it is IRA that the government alleges was required to file a Form 5,[20] it may attempt to argue that a legal entity does not have a Fifth Amendment privilege against self-incrimination. Any such argument would be wrong. In this specific context courts have held that "Fifth Amendment concerns . . . 'buttress[]'" the proposition that there is no duty to disclose uncharged criminal conduct. *See United States v. Crop Growers Corp.*, 954 F. Supp. 335, 345-348 (D.D.C. 1997) (citing *United States v. Matthews*, 787 F.2d 38 (2d Cir. 1986)); *see also Roeder v. Alpha Indus., Inc.*, 814 F.2d 22, 26 (1st Cir. 1987) (recognizing the "[F]ifth [A]mendment concerns . . . present in *Matthews*"); *cf. Whiteside & Co. v. S.E.C.*, 883 F.2d 7, 10 (5th Cir. 1989) (implicitly recognizing principle that corporate petitioner had rights against self-incrimination when rejecting

[20] For the reasons set forth above, it is clear that Concord did not have any reporting requirement.

argument that SEC capital deficiency reporting requirement violated those rights). The D.C. Circuit in *Crop Growers* dismissed a 18 U.S.C. §§ 1001 charge and two other charges against a corporate defendant where the defendant had no duty to disclose uncharged criminal conduct related to alleged violations of FECA by making illegal campaign contributions. *Id.* at 344-48. In reaching that conclusion, the court relied on the Second Circuit's decision in *Matthews*, which involved an appeal of a conviction for violation of securities laws in which the defendant failed to disclose on a proxy statement that he had engaged in conspiracy. *Matthews*, 787 F.2d at 44. Similarly, in *Communist Party of U.S. v. United States*, 384 F.2d 957, 959 (D.C. Cir. 1967), the D.C. Circuit reversed convictions against a legal entity—the Communist Party—for failing to register under the Subversive Activities Control Act because convictions were "hopelessly at odds with the protections afforded by the Fifth Amendment."

B. It is Not Possible for Concord to Determine Who Was Required to Register Under FARA or the Identity of the Foreign Principal

With respect to FARA registration, the government first claims that travel to the United States by certain conspirators triggered a FARA reporting requirement pursuant to 22 U.S.C. §§ 612(a), 611(c)(1)(ii) and 611(g), (h), (p). BOP ¶ 4. The government fails to indicate who was supposed to register or the name of the foreign principal to be disclosed, and the citations in the Bill of Particulars offer no guidance. Section 612(a) simply requires the "agent" of a "foreign principal" to register under FARA. Section 611(c)(1)(ii) defines "agent" as a person who "acts within the United States as a public relations counsel, publicity agent, information-service employee or political consultant for a foreign principal." Section 611(g) defines a "public-relations counsel" as a person "who engages directly or indirectly in informing, advising, or in any way representing a principal in any public relations matter pertaining to political or public interests, policies, or relations of such principal." Section 611(h) defines a "publicity agent" as a person

who engages directly or indirectly in the publication or dissemination of oral, visual, graphic, written, or pictorial information or matter of any kind, including publication by means of advertising, books, periodicals, newspapers, lectures, broadcasts, motion pictures, or otherwise." Section 611(p) defines a "political consultant" as a person "who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or of a foreign political party."

The sub-provisions of FARA now relied upon by the government were not identified in the Indictment, nor were they cited by the government in its Opposition to the Motion to Dismiss. *See* ECF 56 at 6-7 (citing 22 U.S.C. § 611(b), (c), and (o) for the definition of foreign principal). Nor were any of these sub-provisions relied upon by the Court in denying the Motion to Dismiss. *See* Nov. 15 Opinion at 12-13. These omissions are unsurprising, as there is exactly one reported case in the history of FARA dealing with any of the definitions cited by the government. In *RM Broad. v. United States Dep't of Justice*, 379 F. Supp. 3d 1256 (S.D. Fla. 2019), the court held that a U.S. broadcasting company who contracted to broadcast transmissions from a Russian government-owned news agency was a "publicity agent" and required to register under FARA.[21]

Concord is left to deduce who was required to register under FARA and who are the agents and principals because, as noted above, the Bill of Particulars fails to provide that information. The agent cannot be Concord because the Indictment does not allege that Concord actually engaged in any of the travel to the United States or social media postings, but only controlled funding, recommended personnel, and oversaw activities of IRA. *See* Indictment ¶¶ 3, 11, 12.

[21] Further, until the Special Counsel started flinging FARA indictments around, for 50 years, from 1966 to 2015, the Department of Justice brought only seven criminal FARA cases. *See* Ex. K, Office of the Inspector General, U.S. Department of Justice Audit Report Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act at 8 (September 2016).

Further, if Concord was the agent required to register, the identity of the principal remains an utter mystery because, as the Court has noted and the government has agreed, the Indictment contains no allegation that the conspirators were acting as agents of the Russian government. *See* Mem. Op. & Order 6, July 1, 2019, ECF No. 148; Gov't's Suppl. Brief Regarding Def.'s Mot. to Show Cause 4, June 5, 2019, ECF No. 139.

Nor can Concord be the principal for the individuals who traveled to the United States or the individuals who posted content on the internet because the Indictment contains no allegation that Concord had an agency relationship with any of those individuals. So if Concord is neither the agent nor the principal, that leaves only the possibility that the individual conspirators were acting as foreign agents of IRA and were required to register as such. But that does not create FARA liability for IRA or Concord; the only possible theory of liability would be as to the individuals who worked for IRA and their failure to register as agents of IRA under FARA. *See* 22 U.S.C. § 612(a) (2018) (requiring agents of foreign principals to file registration statement) and 22 U.S.C. § 618 (2018) (setting for the punishment for willful violations of FARA).

Because there is no case law regarding whether or not the conduct of the individuals working for IRA were required to file under FARA, once again in this case we are dealing with a legal issue of first impression. That is, while the government alleges that there was a duty to register, we only have the government's word for it. Worse yet, we have no independent government agency making this determination, instead we have the Department of Justice both making the determination and prosecuting the case.

So we are left with relying on the plain language of the statute. The government claims that the three individuals working for IRA who apparently traveled to the United States were public relations counsel, publicity agents, and/or political consultants. BOP ¶ 4 (citing 22 U.S.C. §§

611(g), (h), and (p)). Of course, there is no such allegation in the Indictment. Moreover, even if these individuals did what the government claims, they did nothing falling within the definitions contained in the statute. Further, if their conduct did require registration, which it did not, any foreign person working for a foreign country or foreign company who traveled to the United States and reported back on what they did, saw, or observed would be required to register under FARA. There is no precedent to apply FARA in this way.

Similarly, with respect to the alleged internet activity to allegedly influence public opinion on political matters, the government suggests without any legal support that unidentified "conspirators" were required to register under FARA. BOP ¶ 4. This despite the fact that the Indictment contains no allegations that any individual was within the United States when they engaged in the alleged conduct that, according to the government, triggered the registration requirement under FARA. The government has not presented, nor is the undersigned aware of, any authority that supports the notion that a foreign national who resides in and engages in conduct from a foreign country is subject to the FARA registration requirements. To the contrary, the plain language of the statute and the legislative history suggest otherwise. FARA defines "agent of a foreign principal" as "any person who . . . (i) engages *within the United States* in political activities . . . (ii) acts *within the United States* as a public relations counsel . . . (iii) *within the United States* solicits . . . contributions, loans, money, or other things of value . . . or (iv) *within the United States* represents the interests of such foreign principal before any agency or official of the Government of the United States." 22 U.S.C. § 611(c)(1)(i), (ii), (iii) and (iv). Similarly, 22 U.S.C. § 614, which restricts the dissemination of propaganda materials, expressly applies to "person[s] *within the United States*." (The government failed to disclose this provision in its citation to § 614(a). BOP ¶ 2.) Had Congress intended for these definitions and restrictions to apply to conduct

occurring abroad, it certainly would have omitted the phrase "within the United States." FARA also provides that "[a]ny alien who shall be convicted of a violation . . . shall be subject to removal pursuant to chapter 4 of title II of the Immigration and Nationality Act." 22 U.S.C. § 618(c) (2018). An alien, of course, cannot be removed from the United States unless he or she is already present within its borders.

The legislative history of FARA also demonstrates an intent that the statute apply only to conduct occurring within the United States. During a floor debate leading up to the original passage of the law in 1938, Representative Celler stated that the purpose of the bill was "to require all persons *who are in the United States* for political propaganda purposes . . . to register with the State Department and to supply information about their political propaganda activities, their employers, and the terms of their contracts." Ex. L, House Agreement to Conference Report, June 2, 1938, pp. 8021-22 Debate: 75th Congress, 2nd Session [Vol. 82]: Document No. 15. Representative Celler added that the law "will publicize the nature of subversive or other similar activities of such foreign propagandists, so that the American people may know those *who are engaged in this country* by foreign agencies to spread doctrines alien to our democratic form of government . . . ." *Id.* Finally, Representative Celler noted that the bill would not require a "foreign corporation engaged in honorable trade relations with this country" to register, but that "whenever representatives *are sent here* to spread by word of mouth, or by the written word, the ideology, the principle, and the practices of other forms of government and the things for which they stand, then registry must be made." *Id.* Clearly, Congress intended for the registration requirements of FARA to apply only where the foreign agent is operating within the borders of the United States.

There has been no allegation or evidence produced in discovery to suggest that the conduct identified in the second bullet of ¶ 4 of the BOP was carried out by any individual located within

the United States. As such, it remains a mystery who the government contends, and intends to establish at trial, was required to register under FARA and for what purpose. The government should be required to provide this information before trial so as to avoid prejudicial surprise and allow Concord to understand the charges against it.

III. CONCLUSION

Concord, a foreign corporation with no past or current presence in the United States, should not be required to engage in a guessing game in preparing for trial. The government has clearly shifted its theory of liability post-indictment. If the Court does not require the government to identify which defendant(s) were required to register under FARA (and on behalf of whom) or file under FECA it will be impossible for Concord to prepare for trial; and moreover, the Court will not know until sometime during trial whether or not the Indictment should be dismissed as a matter of law.

Dated: August 19, 2019

Respectfully submitted,

CONCORD MANAGEMENT AND CONSULTING LLC

By Counsel

/s/ *Eric A. Dubelier*

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Exhibit A

FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 19, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2014-20

Sai
Make Your Laws PAC, Inc.
c/o Nick Staddon, Secretary
122 Pinecrest Road
Durham, NC 27705

Dear Sai:

We are responding to the advisory opinion request that you submitted on behalf of Make Your Laws PAC, Inc. concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-30146 (formerly 2 U.S.C. §§ 431-457) (the "Act"), and Commission regulations to volunteer services provided by foreign nationals. The Commission concludes that the requestor may accept uncompensated services from foreign national volunteers as proposed.

Background

The facts presented in this advisory opinion are based on the requestor's advisory opinion request ("AOR") received on November 24, 2014.

The requestor is a nonconnected political committee. The requestor and two other entities (collectively, the "MYL Group") jointly own the rights to the code, design, graphics, trademarks, and trade dress[1] (collectively, "intellectual property") of the requestor's website and brand. Nearly all of the code is open source[2] and open-source licensed.[3]

[1] The requestor describes "trade dress" as including branding and logos. AOR at 2.

[2] The requestor describes "open source" to mean that the code is available online "for anyone to see." AOR at 2 n.2.

[3] According to the requestor, "[b]roadly speaking, this [open source license] means a copyright license that permits anyone to re-use software so long as they give credit and publish any derivative works under the same terms." AOR at 2 n.3; *see also Open Source License*, OPEN SOURCE INITIATIVE, http://opensource.org/licenses (last visited Dec. 14, 2014).

"To date, all services in creating the [intellectual property] have been provided by unpaid volunteers who are United States citizens." AOR at 2. The requestor states that when such services might result in the creation of intellectual property, the MYL Group asks volunteers to sign an intellectual property assignment to transfer all rights and ownership in the intellectual property to the MYL Group. The volunteers, however, receive a perpetual license from the MYL Group to use their work as they see fit, unless the MYL Group determines that there would be an impact on its trademark or trade dress.

The requestor would like to accept the same kind of volunteer services from foreign nationals as the MYL Group currently receives from United States citizens, and under the same terms. The volunteer services the requestor proposes to accept from foreign nationals are intended to, and very likely will, result in the creation of website code, logos, and other items. The requestor states that if it cannot obtain the intellectual property rights in such items, it will be unable to use those items or even to accept the foreign nationals' volunteer services. AOR at 4. Because the requestor's website code is open source "and *constantly* available for collaboration," the requestor expects to receive these services on an "*ad hoc*, continuous basis." *Id.* (emphasis in original). The requestor asks the Commission to assume that all requirements of 52 U.S.C. § 30101(8)(B) and (9)(B) (formerly 2 U.S.C. § 431(8)(B) and (9)(B)) are met: "*E.g.* out of pocket costs such as printing, distribution, web hosting, etc. will be paid for by [the requestor]; volunteers will not be 'compensated' by anyone . . . but may use their own equipment (such as a laptop) in providing such services; [the requestor] will not act as an agent of any foreign national nor permit any foreign national to participate in its operations, make decisions regarding contributions or expenditures, etc. . . . ." AOR at 3 n.6.

Question Presented

May the requestor accept the assignment of any intellectual property in unpaid volunteer services performed by foreign nationals and provided in accordance with 52 U.S.C. § 30101(8)(B)(i) (formerly 2 U.S.C. § 431(8)(B)(i))?

Legal Analysis and Conclusions

Yes, the requestor may accept uncompensated volunteer services from foreign nationals as proposed.

The Act prohibits any foreign national from making "a contribution or donation of money or other thing of value" in connection with a federal, state, or local election.[4] 52 U.S.C. § 30121(a)(1)(A) (formerly 2 U.S.C. § 441e(a)(1)(A)); *see also* 11 C.F.R. § 110.20(b). The Act also prohibits any person from "solicit[ing], accept[ing], or receiv[ing]" such a contribution or donation from a foreign national. 52 U.S.C. § 30121(a)(2) (formerly 2 U.S.C. § 441e(a)(2)); *see also* 11 C.F.R. § 110.20(g).

[4] A "foreign national" is "an individual who is not a citizen of the United States or a national of the United States . . . and who is not lawfully admitted for permanent residence." 52 U.S.C. § 30121(b)(2) (formerly 2 U.S.C. § 441e(b)(2)); *see also* 11 C.F.R. § 110.20(a)(3)(ii).

The Act and Commission regulations also provide that the term "contribution" does not include "the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee." 52 U.S.C. § 30101(8)(B)(i) (formerly 2 U.S.C. § 431(8)(B)(i)); *see also* 11 C.F.R. § 100.74. Applying this "volunteer services exception" in the context of foreign nationals, the Commission has concluded that a foreign national entertainer who performed without compensation at a candidate's fundraiser did not provide a contribution to that candidate. *See* Factual & Legal Analysis at 6, MURs 5987, 5995, and 6015 (Hillary Clinton For President) (Feb. 30, 2009), http://eqs.fec.gov/eqsdocsMUR/29044230266.pdf. Similarly, in Advisory Opinion 2004-26 (Weller), the Commission found that a foreign national would not provide a contribution to a candidate by participating without compensation in certain of the candidate's campaign-related activities, including the solicitation of contributions, attendance at political events, and meeting with the candidate and his campaign committee. Because the services would not be contributions, they would not be subject to the prohibition on contributions from foreign nationals. Advisory Opinion 2004-26 (Weller) at 2; *see also* Advisory Opinion 2007-22 (Hurysz) at 3 ("[T]he value of volunteer services provided to your campaign by Canadian nationals would not constitute a prohibited in-kind contribution to your campaign."); Advisory Opinion 1987-25 (Otaola) at 1 (concluding that foreign national's "work as a volunteer without compensation would not . . . result in a contribution to a candidate because the value of uncompensated volunteer services is specifically exempted from the definition of contribution under the Act").[5]

For the same reasons, to the extent that a foreign national volunteers his or her uncompensated personal services to the requestor to help design the requestor's website code, logos, "trademarks," and "trade dress," the value of those services would not constitute an unlawful foreign national contribution or donation because they are exempt from the definition of "contribution" under the volunteer services exemption.[6]

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[5] *But see* Advisory Opinion 1981-51 (Metzenbaum) (concluding that foreign national artist would be prohibited from donating uncompensated volunteer services to committee to create original work of art for committee's fundraising). The Commission hereby expressly supersedes Advisory Opinion 1981-51 (Metzenbaum). A statute must be interpreted "as a symmetrical and coherent regulatory scheme." *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (internal citations and quotations omitted). In Advisory Opinion 1981-51 (Metzenbaum), however, the Commission did not construe the Act's foreign national contribution ban and volunteer services exception in conjunction with each other. Furthermore, to the extent that MURs 5987, 5996, and 6015 (Hillary Clinton For President) sought to distinguish Advisory Opinion 1981-51 (Metzenbaum) by making a distinction between the provision of volunteer services by a foreign national and the creation and donation of a tangible good, the Commission does not adopt that reasoning.

[6] For purposes of the foreign national prohibition, and consistent with congressional intent, the Commission interprets the definition of "donation" in 11 C.F.R. § 110.20 as essentially equivalent to the definition of "contribution." *See, e.g.*, Contribution Limitations and Prohibitions, 67 Fed. Reg. 69,928, 69,944 (Nov. 19, 2002). While the Commission has noted that certain exemptions from the definition of "contribution" cannot necessarily be applied to donations because of differences among states' laws, *see* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,085 (Jul. 29, 2002), the foreign national prohibition is a nationwide provision that does not vary among the states. Thus, the regulatory exemption for volunteer services applies uniformly to federal contributions and state and local donations by foreign nationals. The Commission here does not consider how the terms "contribution" and "donation" may be interpreted elsewhere within the Act or Commission regulations.

The fact that the requestor may obtain rights to intellectual property resulting from the foreign nationals' volunteer services does not change the result. As discussed above, the Commission has consistently interpreted the Act and Commission regulations as permitting foreign nationals to provide volunteer services to political committees. *See* Advisory Opinion 2004-26 (Weller) at 2 (finding that foreign nationals' uncompensated participation in campaign-related activities are not contributions); Advisory Opinion 2007-22 (Hurysz) at 3 (same); Advisory Opinion 1987-25 (Otaola) at 2 ("[A]ny individual, including a foreign national, may volunteer his or her uncompensated services to a candidate without making a contribution to that candidate."); Factual & Legal Analysis at 2-6, MURs 5987, 5995, and 6015 (Hillary Clinton For President).

As noted, the volunteer services the requestor proposes to accept from foreign nationals are intended to, and likely will, result in the creation of website code, logos, and other items. The requestor cautions that if it may not obtain the intellectual property rights in such items, it will not be able to use those items, or even accept the foreign nationals' volunteer services. AOR at 4. But, as explained, the Commission's prior interpretations of the Act and Commission regulations have permitted foreign nationals to provide volunteer services, consistent with the Act's volunteer services exception. Because the requestor here proposes to receive only benefits that result directly and exclusively from the provision of volunteer services by foreign nationals, the Commission concludes that the proposal would not result in a prohibited contribution.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108 (formerly 2 U.S.C. § 437f). The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B) (formerly 2 U.S.C. § 437f(c)(1)(B)). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions and enforcement materials cited herein are available on the Commission's website.

On behalf of the Commission,

(signed)
Ann M. Ravel
Chair

Exhibit B

HEARING BEFORE THE UNITED STATES SENATE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON CRIME AND TERRORISM

October 31, 2017

Testimony of Colin Stretch
General Counsel, Facebook

I. INTRODUCTION

Chairman Graham, Ranking Member Whitehouse, and distinguished members of the Subcommittee, thank you for this opportunity to appear before you today. My name is Colin Stretch, and since July 2013, I've served as the General Counsel of Facebook. We appreciate this Subcommittee's hard work as it continues to seek more effective ways to combat crime, terrorism, and other threats to our national security.

At Facebook, we take all of these threats very seriously. One of our chief commitments is to create innovative technology that gives people the power to build community and bring the world closer together. We're proud that over 2 billion people around the world come to Facebook every month to share with friends and family, to learn about new products and services, to volunteer or donate to organizations they care about, or help out in a crisis. The promise of real connection, of extending the benefits of real world connections online, is at the heart of what we do and has helped us grow into a global company.

Being at the forefront of new technology also means being at the forefront of new legal, security, and policy challenges. Our teams work every day to confront these challenges head on. Thousands of Facebook employees around the world work to make Facebook a place where both expression and personal safety are protected and respected.

You have asked me to discuss several important issues for our platform and others like it—the threat of extremist content online, and what we know now about the efforts by foreign actors to interfere with the 2016 election.

When it comes to the 2016 election, I want to be clear: The foreign interference we saw is reprehensible and outrageous and opened a new battleground for our company, our industry, and our society. That foreign actors, hiding behind fake accounts, abused our platform and other internet services to try to sow division and discord—and to try to undermine our election process—is an assault on democracy, and it violates all of our values.

At Facebook, we build tools to help people connect, and to be a force for good in the world. What these actors did goes against everything Facebook stands for. Our goal is to bring people closer together; what we saw from these actors was an insidious attempt to drive people apart. And we're determined to prevent it from happening again.

I'd also like to address some of the challenges we face in fighting terrorism online and what we're doing to solve those challenges.

Keeping our community safe on Facebook is critical to our mission. Our stance is simple: There's no place on Facebook for terrorism. We remove terrorists and posts that support terrorism whenever we become aware of them. When we receive reports of potential terrorism posts, we urgently scrutinize those reports. And in the rare cases when we uncover evidence of imminent harm, we promptly inform authorities. Although academic research finds that the radicalization of members of groups like ISIS and Al Qaeda primarily occurs offline, we know that the internet does play a role—and we don't want Facebook to be used for any terrorist activity whatsoever. While there are challenges to fighting terrorism, we believe technology, and Facebook, can be part of the solution.

II. FIGHTING ELECTION INTERFERENCE ON FACEBOOK

Let me turn first to the issue of foreign interference in the 2016 election. I want to share with you what we know so far about what happened—and what we're doing about it. At the outset, let me explain how our service works and why people choose to use it.

A. Understanding what you see on Facebook

1. The News Feed Experience: A Personalized Collection of Stories. When people come to Facebook to share with their friends and discover new things, they see a personalized homepage we call News Feed. News Feed is a constantly updating, highly personalized list of stories, including status updates, photos, videos, links, and activity from the people and things you're connected to on Facebook. The goal of News Feed is to show people the stories that are most relevant to them. The average person has thousands of things on any given day that they could read in their News Feed, so we use personalized ranking to determine the order of stories we show them. Each person's News Feed is unique. It's shaped by the friends they add; the people, topics, and news sources they follow; the groups they join; and other signals like their past interactions. On average, a person in the US is served roughly 220 stories in News Feed each day. Over the time period in question, from 2015 to 2017, Americans using Facebook were exposed to, or "served," a total of over 33 trillion stories in their News Feeds.

2. Advertising and Pages as Sources of Stories in News Feed. News Feed is also a place where people see ads on Facebook. To advertise in News Feed, a person must first set up a Facebook account—using their real identity—and then create a Facebook Page. Facebook Pages represent a wide range of people, places, and things, including causes, that people are interested in. Any user may create a Page to express support for or interest in a topic, but only official representatives can create a Page on behalf of an organization, business, brand, or public figure. It is against our terms for Pages to contain false, misleading, fraudulent, or deceptive claims or content. Facebook marks some official Pages—such as for a public figure, media company, or brand—with a "verified" badge to let people know they're authentic. All Pages must comply with our Community Standards and ensure that all the stories they post or share respect our policies prohibiting hate speech, violence, and sexual content, among other restrictions. People can like or follow a Page to get updates, such as posts, photos, or videos, in their News Feed. The average person in the US likes 178 Pages. People do not necessarily see every update from each of the Pages they are connected to. Our News Feed ranking determines how relevant we think a story from a Page will be to each person. We make it easy for people to override our recommendations by giving them additional controls over whether they see a Page's updates

higher in their News Feed or not at all. For context, from 2015 to 2017, people in the United States saw 11.1 trillion posts from Pages on Facebook.

3. Advertising to Promote Pages. Page administrators can create ads to promote their Page and show their posts to more people. The vast majority of our advertisers are small- and medium-sized businesses that use our self-service tools to create ads to reach their customers. Advertisers choose the audience they want to reach based on demographics, interests, behaviors or contact information. They can choose from different ad formats, upload images or video, and write the text they want people to see. Advertisers can serve ads on our platform for as little as $0.50 per day using a credit card or other payment method. By using these tools, advertisers agree to our Self-Serve Ad Terms. Before ads appear on Facebook or Instagram, they go through our ad review process that includes automated checks of an ad's images, text, targeting and positioning, in addition to the content on the ad's landing page. People on Facebook can also report ads, find more information about why they are being shown a particular ad, and update their ad preferences to influence the type of ads they see.

B. Promoting Authentic Conversation

Our authenticity policy is the cornerstone of how we prevent abuse on our platform, and was the basis of our internal investigation and what we found.

From the beginning, we have always believed that Facebook is a place for authentic dialogue, and that the best way to ensure authenticity is to require people to use the names they are known by. Fake accounts undermine this objective, and are closely related to the creation and spread of inauthentic communication such as spam—as well as used to carry out disinformation campaigns like the one associated with the Internet Research Agency (IRA), a Russian company located in St. Petersburg.

We build and update technical systems every day to better identify and remove inauthentic accounts, which also helps reduce the distribution of material that can be spread by accounts that violate our policies. Each day, we block millions of fake accounts at registration. Our systems examine thousands of account attributes and focus on detecting behaviors that are very difficult for bad actors to fake, including their connections to others on our platform. By constantly improving our techniques, we also aim to reduce the incentives for bad actors who rely on distribution to make their efforts worthwhile.

Protecting authenticity is an ongoing challenge. As our tools and security efforts evolve, so will the techniques of those who want to evade our authenticity requirements. As in other areas of cybersecurity, our security and operations teams need to continually adapt.

C. Protecting the Security of the 2016 Election and Learning Lessons Quickly

1. The Evolution of Facebook's Security Protections. From its earliest days, Facebook has always been focused on security. These efforts are continuous and involve regular contact with law enforcement authorities in the United States and around the world. Elections are particularly sensitive events for our security operations, and as the role our service plays in promoting political dialogue and debate has grown, so has the attention of our security team.

As your investigation has revealed, our country now faces a new type of national cyber-security threat—one that will require a new level of investment and cooperation across our society. At Facebook, we're prepared to do our part. At each step of this process, we have spoken out about threats to internet platforms, shared our findings, and provided information to investigators. As we learn more, we will continue to identify and implement improvements to our security systems, and work more closely with other technology companies to share information on how to identify and prevent threats and how to respond faster and more effectively.

2. Security Leading Up to the 2016 Election.

a. Fighting Hacking and Malware. For years, we had been aware of other types of activity that appeared to come from Russian sources—largely traditional security threats such as attacking people's accounts or using social media platforms to spread stolen information. What we saw early in the 2016 campaign cycle followed this pattern. Our security team that focuses on threat intelligence—which investigates advanced security threats as part of our overall information security organization—was, from the outset, alert to the possibility of Russian activity. In several instances before November 8, 2016, this team detected and mitigated threats from actors with ties to Russia and reported them to US law enforcement officials. This included activity from a cluster of accounts we had assessed to belong to a group (APT28) that the US government has publicly linked to Russian military intelligence services. This activity, which was aimed at employees of major US political parties, fell into the normal categories of offensive cyber activities we monitor for. We warned the targets who were at highest risk, and were later in contact with law enforcement authorities about this activity.

Later in the summer we also started to see a new kind of behavior from APT28-related accounts—namely, the creation of fake personas that were then used to seed stolen information to journalists. These fake personas were organized under the banner of an organization that called itself DC Leaks. This activity violated our policies, and we removed the DC Leaks accounts.

b. Understanding Fake Accounts and Fake News. After the election, when the public discussion of "fake news" rapidly accelerated, we continued to investigate and learn more about the new threat of using fake accounts to amplify divisive material and deceptively influence civic discourse. We shared what we learned with government officials and others in the tech industry. And in April 2017, we shared our findings with the public by publishing a white paper that described the activity we detected and the initial techniques we used to combat it.

As with all security threats, we have also been applying what we learned in order to do better in the future. We use a variety of technologies and techniques to detect and shut down fake accounts, and in October 2016, for example, we disabled about 5.8 million fake accounts in the United States. At the time, our automated tooling did not yet reflect our knowledge of fake accounts focused on social or political issues. But we incorporated what we learned from the 2016 elections into our detection systems, and as a result of these improvements, we disabled more than 30,000 accounts in advance of the French election. This same technology helped us disable tens of thousands more accounts before the German elections in September. In other words, we believe that we're already doing better at detecting these forms of abuse, although we know that people who want to abuse our platform will get better too and so we must stay

vigilant.

3. Investigating the Role of Ads and Foreign Interference. After the 2016 election, we learned from press accounts and statements by congressional leaders that Russian actors might have tried to interfere in the election by exploiting Facebook's ad tools. This is not something we had seen before, and so we started an investigation that continues to this day. We found that fake accounts associated with the IRA spent approximately $100,000 on more than 3,000 Facebook and Instagram ads between June 2015 and August 2017. Our analysis also showed that these accounts used these ads to promote the roughly 120 Facebook Pages they had set up, which in turn posted more than 80,000 pieces of content between January 2015 and August 2017. The Facebook accounts that appeared tied to the IRA violated our policies because they came from a set of coordinated, inauthentic accounts. We shut these accounts down and began trying to understand how they misused our platform.

a. Advertising by Accounts Associated with the IRA. Below is an overview of what we've learned so far about the IRA's ads:

- **Impressions (an "impression" is how we count the number of times something is on screen, for example this can be the number of times something was on screen in a person's News Feed):**
  - 44% of total ad impressions were before the US election on November 8, 2016.
  - 56% of total ad impressions were after the election.
- **Reach (the number of people who saw a story at least once):**
  - We estimate 11.4 million people in the US saw at least one of these ads between 2015 and 2017.
- **Ads with zero impressions:**
  - Roughly 25% of the ads were never shown to anyone. That's because advertising auctions are designed so that ads reach people based on relevance, and certain ads may not reach anyone as a result.
- **Amount spent on ads:**
  - For 50% of the ads, less than $3 was spent.
  - For 99% of the ads, less than $1,000 was spent.
  - Many of the ads were paid for in Russian currency, though currency alone is a weak signal for suspicious activity.
- **Content of ads:**
  - Most of the ads appear to focus on divisive social and political messages across the ideological spectrum, touching on topics from LGBT matters to race issues to immigration to gun rights.
  - A number of the ads encourage people to follow Pages on these issues, which in turn produced posts on similarly charged subjects.

b. Content Posted by Pages Associated with the IRA. We estimate that roughly 29 million people were served content in their News Feeds directly from the IRA's 80,000 posts over the two years. Posts from these Pages were also shared, liked, and followed by people on Facebook, and, as a result, three times more people may have been exposed to a story that originated from the Russian operation. Our best estimate is that approximately 126 million people may have been served content from a Page associated with the IRA at some point during the two-year period. This equals about four-thousandths of one percent (0.004%) of content in News Feed, or approximately 1 out of 23,000 pieces of content.

Though the volume of these posts was a tiny fraction of the overall content on Facebook, **any amount is too much**. Those accounts and Pages violated Facebook's policies—which is why we removed them, as we do with all fake or malicious activity we find. We also deleted roughly 170 Instagram accounts that posted about 120,000 pieces of content.

Our review of this activity is ongoing. Many of the ads and posts we've seen so far are deeply disturbing—seemingly intended to amplify societal divisions and pit groups of people against each other. They would be controversial even if they came from authentic accounts in the United States. But coming from foreign actors using fake accounts they are simply unacceptable.

That's why we've given the ads and posts to Congress—because we want to do our part to help investigators gain a deeper understanding of foreign efforts to interfere in the US political system and explain those activities to the public. These actions run counter to Facebook's mission of building community and everything we stand for. And we are determined to do everything we can to address this new threat.

D. Mobilizing to Address the New Threat

We are taking steps to enhance trust in the authenticity of activity on our platform, including increasing ads transparency, implementing a more robust ads review process, imposing tighter content restrictions, and exploring how to add additional authenticity safeguards.

1. Promoting Authenticity and Preventing Fake Accounts. We maintain a calendar of upcoming elections and use internal and external resources to best predict the threat level to each. We take preventative measures based on our information, including working with election officials where appropriate. Within this framework, we set up direct communication channels to escalate issues quickly. These efforts complement our civic engagement work, which includes voter education. In October 2017, for example, we launched a Canadian Election Integrity Initiative to help candidates guard against hackers and help educate voters on how to spot false news.

Going forward, we're also requiring political advertisers to provide more documentation to verify their identities and disclose when they're running election ads. Potential advertisers will have to confirm the business or organization they represent before they can buy ads. Their accounts and their ads will be marked as political, and they will have to show details, including who paid for the ads. We'll start doing this with federal elections in the US and then move onto other elections in the US and other countries**.** For political advertisers that don't proactively identify themselves, we're building machine learning tools that will help us find them and

require them to verify their identity.

Authenticity is important for Pages as well as ads. We'll soon test ways for people to verify that the people and organizations behind political and issue-based Pages are who they say they are.

2. Partnering with Industry on Standards. We have been working with many others in the technology industry, including with Google and Twitter, on a range of elements related to this investigation. Our companies have a long history of working together on other issues such as child safety and counter-terrorism.

We are also reaching out to leaders in our industry and governments around the world to share information on bad actors and threats so that we can make sure they stay off all platforms. We are trying to make this an industry standard practice.

3. Strengthening Our Advertising Policies. We know that some of you and other members of Congress are exploring new legislative approaches to political advertising—and that's a conversation we welcome. We are already working with some of you on how best to put new requirements into law. But we aren't waiting for legislation. Instead we're taking steps where we can on our own, to improve our own approach to transparency, ad review, and authenticity requirements.

a. Providing Transparency. We believe that when you see an ad, you should know who ran it to be able to understand what other ads they're running—which is why we show you the Page name for any ads that run in your News Feed.

To provide even greater transparency for people and accountability for advertisers, we're now building new tools that will allow you to see the other ads a Page is running as well—including ads that aren't targeted to you directly. We hope that this will establish a new standard for our industry in ad transparency. We try to catch material that shouldn't be on Facebook before it's even posted—but because this is not always possible, we also take action when people report ads that violate our policies. We're grateful to our community for this support, and hope that more transparency will mean more people can report violating ads.

b. Enforcing Our Policies. We rely on both automated and manual ad review, and we're now taking steps to strengthen both. Reviewing ads means assessing not just what's in an ad but also the context in which it was bought and the intended audience—so we're changing our ads review system to pay more attention to these signals. We're also adding more than 1,000 people to our global ads review teams over the next year and investing more in machine learning to better understand when to flag and take down ads. Enforcement is never perfect, but we will get better at finding and removing improper ads.

c. Restricting Ad Content. We hold people on Facebook to our Community Standards, and we hold advertisers to even stricter guidelines. Our ads policies already prohibit shocking content, direct threats and the promotion of the sale or use of weapons. Going forward, we are expanding these policies to prevent ads that use even more subtle expressions of violence.

III. COUNTERING VIOLENT EXTREMISM

Now I would like to turn to the challenges we face in fighting terrorism online and our response.

A. Identifying Terrorist Content

One of the challenges we face is identifying the small fraction of terrorist content posted to a platform used by more than 2 billion people every month. We are getting better at using artificial intelligence (AI) to stop the spread of terrorist content on Facebook. We are currently focusing our most cutting-edge techniques to combat terrorist content about ISIS, Al Qaeda, and their affiliates, and we are working to expand to other terrorist organizations. We've gotten better at identifying and removing terrorist content from our site—in fact, most of the content we remove we identify on our own, before anyone has reported it. But because terrorists also adapt as technology evolves, we are constantly updating our technical solutions to try to stay ahead.

First, when someone tries to upload a terrorist photo or video, our systems look for whether the image matches a known terrorism photo or video. This means that if we previously removed a propaganda video from ISIS, we can work to prevent other accounts from uploading the same video to our site. In many cases, this means that terrorist content intended for upload to Facebook simply never reaches people.

Second, we have started to experiment with using AI to understand text that might be advocating for terrorism. We're currently experimenting with developing text-based signals to detect praise or support of terrorist organizations. That analysis goes into an algorithm that is in the early stages of learning how to detect similar posts.

Of course, we cannot rely on AI alone. A photo of an armed man waving an ISIS flag might be propaganda or recruiting material, but it could also be an image in a news story. To understand more nuanced cases, we need human expertise.

Our community of users helps us by reporting accounts or content that may violate our policies—including the small fraction that may be related to terrorism. Our Community Operations teams around the world—which we are growing by 3,000 people over the next year—work 24 hours a day and in dozens of languages to review these reports and determine the context.

We have also significantly grown our team of counterterrorism specialists. We have more than 150 people who are exclusively focused on countering terrorist content. Our team includes academic experts on counterterrorism, former prosecutors, and law enforcement agents and analysts, and engineers. This specialist team alone speaks nearly 30 languages.

B. Identifying Terrorist Clusters

We know from studies of terrorists that they tend to radicalize and operate in clusters. This offline trend is reflected online as well. So when we identify Pages, groups, posts, or profiles as supporting terrorism, we use AI to try to identify related material that may also support terrorism. We do this by examining signals that can reveal similarities among accounts.

C. Identifying Repeat Offenders

While we can disable terrorist accounts, those account owners may create new accounts using different identities. We have gotten much faster at detecting new fake accounts created by repeat offenders. Through this work, we've been able to dramatically reduce the time period that terrorist recidivist accounts are on Facebook. This work is continuous based on the evolving threat.

D. Getting the Full Picture

Another challenge we face is that we don't often have insight into what terrorists are doing on other platforms and beyond. Nor do we have the resources, legal authority, and information available to governments. We're only one piece of the picture, and the threats we're confronting are bigger than any one company, or even any one industry. That's why we are partnering with others to combat these threats.

First, we are partnering with our industry counterparts to more quickly identify and slow the spread of terrorist content online. For example, in 2016, we joined with Microsoft, Twitter, and YouTube to announce a shared industry database of "hashes"—unique digital fingerprints for photos and videos—for content produced by or in support of terrorist organizations. This collaboration has already proved fruitful; we have added several new partners, and hope to add more partners in the future.

And in June 2017, we partnered with those same companies to create the Global Internet Forum to Counter Terrorism. This formalizes and structures existing and future areas of collaboration between our companies and fosters cooperation with smaller tech companies, civil society groups, academics, governments, and international bodies such as the EU and the UN. While the scope of the Forum's work will evolve over time, we are focusing on refining technological solutions to combating terrorism, researching counter-terrorism efforts, and sharing knowledge across our industry, governments, and civil society.

Second, we cannot effectively combat terrorism and other security threats without help from governments and inter-governmental agencies. They have a key role to play in convening and providing expertise that is impossible for companies to develop independently. We have learned much through briefings from agencies in different countries about ISIS and Al Qaeda propaganda mechanisms. We have also participated in and benefited from efforts to support industry collaboration by organizations such as the National Counterterrorism Center (NCTC), the EU Internet Forum, the Global Coalition Against Daesh, and the UK Home Office.

We recognize there are serious and evolving threats to public safety and that law enforcement has an important responsibility to keep people safe. Our legal and safety teams work hard to respond to legitimate law enforcement requests while fulfilling our responsibility to protect people's privacy and security. We have a global team that strives to respond within minutes to emergency requests from law enforcement. In the second half of 2016, for example, we provided information in response to nearly 80% of the 1,695 requests for emergency disclosures that we received from US law enforcement agencies. We provide the information that we can in response to law enforcement requests, consistent with applicable law and our policies. In the second half

of 2016, for example, Facebook received 26,014 requests from US law enforcement agencies covering 41,492 accounts. We produced data in response to more than 83% of these requests.

E. Combatting Terrorism Beyond Our Platform

Finally, while we can try to find and remove terrorist content from Facebook, a key part of combating terrorism is disrupting the underlying ideologies that drive people to commit acts of violence. That's why we are engaged in counterspeech efforts. Counterspeech comes in many forms, but at its core these are efforts to prevent people from pursuing a hate-filled, violent life or convincing them to abandon such a life.

But counter-speech is only effective if it comes from credible speakers. So, we've partnered with non-governmental organizations and community groups to empower the voices that matter most. For example, last year we worked with the Institute for Strategic Dialogue to launch the Online Civil Courage Initiative, a project that has engaged with more than 100 anti-hate and anti-extremism organizations across Europe. We've also worked with Affinis Labs to host hackathons in places like Manila, Dhaka, and Jakarta, where community leaders joined forces with tech entrepreneurs to develop innovative solutions to push back against extremism and hate online. And finally, we've supported a student competition organized through the P2P: Facebook Global Digital Challenge. In less than three years, P2P has reached tens of millions of people worldwide through more than 500 anti-hate and extremism campaigns created by more than 5,500 university students in 68 countries.

IV. CONCLUSION

In conclusion, let me reiterate our commitment to combating terrorism, foreign interference in our democratic process, and other threats. We have a responsibility to do all we can to combat these threats, and we're committed to improving our efforts.

Of course, companies like Facebook cannot do this without help. We will continue to partner with appropriate authorities to counteract these threats. By working together, business, government, and civil society can make it much harder for malicious actors to harm us, while simultaneously ensuring that people can express themselves freely and openly. I'm here today to listen to your ideas and concerns, and I look forward to continuing this constructive dialogue.

Exhibit C

FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 24, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2012-27

Benjamin T. Barr, Esq.
Dan Backer, Esq.
Allen Dickerson, Esq.
National Defense Committee
6022 Knights Ridge Way
Alexandria, VA 22310

Dear Messrs. Barr, Backer, and Dickerson:

We are responding to your advisory opinion request on behalf of the National Defense Committee ("NDC"), concerning the application of the Federal Election Campaign Act, as amended (the "Act"), and Commission regulations to NDC's proposed plan to finance certain advertisements and ask for donations to fund its activities.

The Commission concludes that three of NDC's seven proposed advertisements would not expressly advocate the election or defeat of a clearly identified Federal candidate and two of the four proposed donation requests would not be solicitations of contributions under the Act. The Commission could not approve a response by the required four affirmative votes concerning the remaining advertisements and donation requests, or concerning NDC's other questions. *See* 2 U.S.C. 437c(c); 11 CFR 112.4(a).

Background

The facts presented in this advisory opinion are based on your letter and email received on July 26, 2012.

NDC is incorporated as a non-profit social welfare organization in the Commonwealth of Virginia. It is exempt from taxation under section 501(c)(4) of the Internal Revenue Code. 26 U.S.C. 501(c)(4). NDC focuses on issues that impact war veterans, veterans' affairs, national defense, homeland security, and national security.

NDC states that it is not under the control of any candidate. NDC also states that it will not make any contributions to Federal candidates, political parties, or political committees that make contributions to Federal candidates or political parties, and that it is not affiliated with any group that makes contributions. NDC states that it will not make any coordinated expenditures; its bylaws prohibit its members, officers, employees, and agents from engaging in activities that could result in coordination with a Federal candidate or political party. Bylaws, art. VI, sec. 3 NDC also states that it will not accept any contributions from foreign nationals or Federal contractors.

NDC plans to run seven advertisements, which it describes as "discuss[ing] public issues relevant to upcoming Federal elections, military voting, and policy positions of candidates for federal office that relate to National Defense's core mission." NDC will run these advertisements on a variety of online and social media platforms, including, but not limited to, paid video placements via a commercial vendor. The advertisements, described in the response to Question 1 below, will be in video format, and will include still photos, basic animation, and voice-overs. NDC plans to spend just over $3,000 to produce and distribute these communications, of which $2,000 will be paid to a production company, and $1,000 will be used to distribute the advertisements on the Internet. The production company will be responsible for creating the video format.

NDC also plans to ask for donations from individuals through four separate donation requests, which are described in the response to Question 3 below. NDC states that it has a larger budget to fund activities that are "dissimilar" to the activities described in its advisory opinion request, but that it is "unable to provide any details" about its overall budget or its other activities.

Questions Presented

(1) Will any of NDC's proposed speech constitute "express advocacy" and be subject to regulation?

(2) Will the Commission continue to apply and enforce 11 CFR 100.22(b)?

(3) Will any of NDC's donation communications be deemed "solicitations" and subject to regulation?

(4) Will any of the activities described trigger the requirement to register and be regulated as a "political committee"?

Legal Analysis and Conclusions

Question 1. Will any of NDC's proposed speech constitute "express advocacy" and be subject to regulation?

The Commission concludes that NDC's "Ethically Challenged," "Stop the Liberal Agenda," and "Don't Trust Harry Reid" advertisements are not express advocacy under

11 CFR 100.22. The Commission could not approve a response regarding the remaining advertisements by the required four affirmative votes.

Under the Commission's regulations, a communication expressly advocates the election or defeat of a clearly identified Federal candidate if it:

> [u]ses phrases such as 'vote for the President,' 're-elect your Congressman,' 'support the Democratic nominee,' 'cast your ballot for the Republican challenger for U.S. Senate in Georgia, 'Smith for Congress,' 'Bill McKay in '94,' 'vote Pro-Life' or 'vote Pro-Choice' accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, 'vote against Old Hickory,' 'defeat' accompanied by a picture of one or more candidate(s), 'reject the incumbent,' or communications of campaign slogan(s) or individual word(s), which in context, can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say 'Nixon's the One,' 'Carter '76,' 'Reagan/Bush' or 'Mondale!'.

11 CFR 100.22(a).

Under the Commission's regulations, a communication also constitutes express advocacy if "[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because— (1) [t]he electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) [r]easonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." 11 CFR 100.22(b).

A. "Ethically Challenged" Advertisement

> Nydia Velazquez. Ethically challenged. A key supporter of the Troubled Asset Relief Program. Calls bailed-out Wall Street greedy one day, but takes hundreds of thousands from it the next. A leader you can believe in? Call Nydia Velazquez and let's make sure we end the bailouts that bankrupt America.

The "Ethically Challenged" advertisement does not contain express advocacy under 11 CFR 100.22.

B. "Stop the Liberal Agenda" Advertisement

> Harry Reid: Willing to put America's service men and women at risk through his risky sequestration gamble. Willing to put politics above common sense and protecting the men and women who defend our nation. Stop the insanity, stop sequestrations, stop

> Reid's twisted liberal agenda. This fall, get educated about Harry Reid, get engaged, and get active.

The "Stop the Liberal Agenda" advertisement does not contain express advocacy under 11 CFR 100.22.

C. "Don't Trust Harry Reid" Advertisement

> What kind of leader is Harry Reid? Ineffective. Ultra-liberal. Unrepresentative of Nevada values. Harry Reid voted for increasing Tricare premiums to nickel and dime America's heroes. Veterans and service men and women know better than to trust Harry Reid. This November: support new voices, support your military, support Nevada values.

The "Don't Trust Harry Reid" advertisement does not contain express advocacy under 11 CFR 100.22.

The Commission could not approve a response regarding the following advertisements by the required four affirmative votes:

D. "Let's Make History" Advertisement

> America needs a strong military capable of meeting the threats of tomorrow. But Nydia Velazquez repeatedly introduced and supported bills like HR 3638 that would cut off funding for frontline troops. Rather than standing up for America, Nydia Velazquez has been one of the least effective members of Congress. This fall, let's make history by changing that. Protect our freedom. Defend our nation. Learn about HR 3638.

E. "ObamaCare" Advertisement

> Nancy Pelosi and ObamaCare, what a pair! Even though most Americans opposed ObamaCare, Pelosi maintained her support of socialized medicine. But we can't let ObamaCare win. Our proud patriotic voices must stand against ObamaCare and vote socialized medicine out. Support conservative voices and public servants ready to end ObamaCare's reign.

F. "Military Voting Matters" Advertisement

> Military voting matters. That's why Nancy Pelosi is such a disappointment for service men and women. Instead of supporting express delivery of overseas military ballots, Pelosi favored sluggish postal unions. Shouldn't military voices and votes matter? Shouldn't yours? Be heard this fall.

G. "Military Voting Hindered" Advertisement

> Our heroes on the front lines know that Obama's assault on America's military is putting their lives, the care of wounded warriors, and the GI and Veterans' benefits they were promised at risk. Is that why Obama's Justice Department and Congressional liberals refuse to stand up for military voting rights? Shouldn't those who dodge bullets for our freedom be free to vote their conscience and vote out those who won't keep their promises? Take a stand with us and make sure military voting is taken seriously.

Question 2. Will the Commission continue to apply and enforce 11 CFR 100.22(b)?

The Commission could not approve a response by the required four affirmative votes about whether this question qualifies as an advisory opinion request. *See* 2 U.S.C. 437c(c); 11 CFR 112.1(b), 112.4(a).

Question 3. Will any of NDC's donation communications be deemed "solicitations" and subject to regulation?

Two of NDC's proposed donation requests – entitled "Strategic Stupidity" and "Fighting Back" – will not constitute "solicitations." *See FEC v. Survival Educ. Fund*, 65 F.3d 285, 295 (2d Cir. 1995). The Commission could not approve a response regarding the remaining proposed donation requests by the required four affirmative votes.

A. *"Strategic Stupidity" Donation Request*

> Crippling America's military through sequestration is a strategic failure – and Senate Democrats have supported this insanity! With your donation, we can speak out against the liberal dream of ending American Exceptionalism and decimating America's military. We can stop the Democrats' madness. Help send a message to misguided Senators like John Tester. Support National Defense, and let's retire these failed policies.

The "Strategic Stupidity" donation request will not constitute a solicitation for contributions. It states that donations will be used to "speak out against the liberal dream of ending American Exceptionalism and decimating America's military" and to "retire these failed policies." Although the donation request urges potential donors to "[h]elp send a message to misguided Senators like John Tester," it does not "clearly indicat[e] that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office." *Survival Educ. Fund*, 65 F.3d at 295; *see also* Advisory Opinion 2012-11 (Free Speech) (concluding that

the "Strategic Speech" donation request, which also indicated an intention to "speak out against" certain policies with funds raised and "retire failed . . . policies," was not a solicitation). Accordingly, this donation request is not a solicitation under the Act.

B. *"Fighting Back" Donation Request*

> Supporters of traditional constitutional values have celebrated our courts' defense of freedom, and planned how to make the most effective use of your support this fall. Your donation to National Defense will beat back the liberal Obama agenda and bring about real change in Washington. Help America fight back in print, on the air, and against liberal deep pockets. Stand together. Get organized. Start now.

The "Fighting Back" donation request will not constitute a solicitation for contributions. It states that "this fall" funds requested "will beat back the liberal Obama agenda and bring about real change in Washington." The request does not "clearly indicat[e] that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office." *Survival Educ. Fund*, 65 F.3d at 294-95. "[F]ight[ing] back in print, on the air, and against liberal deep pockets" could refer to advocacy regarding legislation or executive branch action. Accordingly, this donation request is not a solicitation under the Act.

The Commission could not approve a response regarding the following proposed donation requests by the required four affirmative votes.

C. *"Military Voices and Votes Must be Heard" Donation Request*

> Our heroes on the front lines know that Obama's assault on America's military is putting their lives, the care of wounded warriors, and the GI and Veterans benefits they were promised at risk. Is that why Obama's Justice Department & Congressional liberals refuse to stand up for military voting rights? Help those who dodge bullets for our freedom vote their conscience. Support their right to vote out Obama – donate to National Defense so we can stand up for military voting rights this fall.

D. *"America the Proud?" Donation Request*

> It used to be that America was a nation we could be proud of. But today, an ultra-liberal Congress repeatedly ignores the value of our military. Military voting, ignored. Protecting military benefits, disregarded. Veterans, left out in the cold. And the Commander in Chief sits by. In building a $1 billion war chest, the Commander in Chief makes sure liberals will win this fall, while crippling the military. Let's put an end to this nonsense. Donate to National

Defense Committee today and let's roll back the Commander in Chief's liberal agenda.

Question 4. Will any of the activities described trigger the requirements to register and be regulated as a "political committee"?

The Commission could not approve a response by the required four affirmative votes about whether this question qualifies as an advisory opinion request. *See* 2 U.S.C. 437c(c); 11 CFR 112.1(c), 112.4(a).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestors may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. The cited advisory opinions are available on the Commission's Web site, www.fec.gov, or directly from the Commission's advisory opinion searchable database at http://www.fec.gov/searchao.

On behalf of the Commission,

(signed)
Caroline C. Hunter
Chair

Exhibit D

FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 8, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2012-11

Benjamin T. Barr Esq.
Stephen R. Klein, Esq.
Wyoming Liberty Group
1740 H Dell Range Blvd. #459
Cheyenne, WY 82009

Dear Messrs. Barr and Klein:

We are responding to your advisory opinion request on behalf of Free Speech, concerning the application of the Federal Election Campaign Act, as amended (the "Act"), and Commission regulations to Free Speech's proposed plan to finance certain advertisements and ask for donations to fund its activities.

The Commission concludes that: two of Free Speech's 11 proposed advertisements would expressly advocate the election or defeat of a clearly identified Federal candidate; four of the proposed advertisements would not expressly advocate the election or defeat of a clearly identified Federal candidate; and two of the four proposed donation requests would not be solicitations under the Act. The Commission could not approve a response by the required four affirmative votes about the remaining advertisements and donation requests, or about Free Speech's status as a political committee. *See* 2 U.S.C. 437c(c); 11 CFR 112.4(a).

Background

The facts presented in this advisory opinion are based on your letter received on February 29, 2012, and your email received on March 9, 2012.

Free Speech describes itself as "an independent group of individuals which promotes and protects free speech, limited government, and constitutional accountability." Bylaws, Art. II. It is an unincorporated nonprofit association formed

under the Wyoming Unincorporated Nonprofit Association Act, WYO. STAT. ANN. 17-22-101 to 115 (2012), and a "political organization" under 26 U.S.C. 527 of the Internal Revenue Code.[1] It currently has three individual members.

Free Speech will not make any contributions to Federal candidates, political parties, or political committees that make contributions to Federal candidates or political parties. Nor is Free Speech affiliated with any group that makes contributions. Free Speech also will not make any coordinated expenditures.[2]

Free Speech plans to run 11 advertisements, which it describes as "discuss[ing] issues concerning limited government, public policy, the dangers of the current administration, and their connection with candidates for federal office." Free Speech will run these advertisements in various media, including radio, television, the Internet, and newspapers. Free Speech currently plans to run the following ads, which are described more fully in response to question 1 below.

Radio Advertisements

Free Speech plans to spend $1,000 on three advertisements to be aired on local radio station KGAB AM in Cheyenne, Wyoming. These advertisements, which Free Speech calls "Environmental Policy," "Financial Reform," and "Health Care Crisis," will be aired 60 times between April 1 and November 3, 2012. Free Speech currently plans to allocate its budget evenly among the three advertisements, spending $333.33 for each.

Newspaper Advertisements

Free Speech plans to spend $500 on two advertisements that will appear in the *Wyoming Tribune Eagle* on May 12 and May 27, 2012. Free Speech plans to spend $250 on each advertisement. The advertisements – "Financial Reform" and "Health Care Crisis" – will include pictures as well as text.

[1] The Internal Revenue Code defines a political organization as "a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for [the tax-]exempt function" of "influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization," or the election or selection of presidential or vice presidential electors. 26 U.S.C. 527(e).

[2] Free Speech's bylaws prohibit its members, officers, employees, and agents from engaging in activities that could result in coordination with a Federal candidate or political party. Bylaws, Art. VI. And members, officers, employees and agents have a duty to "ensure the independence of all speech by the Association about any candidate or political party . . . in order to avoid coordination." Bylaws, Art. VI, Sec. 3.

Internet Advertisements

Free Speech plans to spend $500 on two advertisements that will appear on Facebook. The advertisements will appear for a total of "200,000 impressions on Facebook within Wyoming network" between April 1 and April 30, 2012. Free Speech plans to spend $250 on each advertisement. The two advertisements, entitled "Gun Control" and "Environmental Policy," will include pictures as well as text.

Television Advertisements

Free Speech plans to spend $8,000 on four advertisements that will appear on the local television network KCWY in Cheyenne, Wyoming. The advertisements will appear approximately 30 times between May 1 and November 3, 2012. Free Speech plans to spend $2,000 on each of the four advertisements. The advertisements are entitled "Gun Control," "Ethics," "Budget Reform," and "An Educated Voter Votes on Principle."

In total, Free Speech plans to spend $10,000 to run the advertisements described above. Free Speech "would like to speak out in similar ways in the future."

Free Speech has identified one individual donor willing to give it $2,000 or more, and would like to ask other individuals to donate more than $1,000 "to help support its speech." Free Speech would also draw upon funds from its three members to pay for advertisements costing more than $2,000. Free Speech, however, will not accept donations from individuals who are foreign nationals or Federal contractors. Free Speech plans to ask for donations from individuals through four separate donation requests, which are described in response to question 2 below.

Questions Presented

1. Will Free Speech's proposed advertisements be "express advocacy"?

2. Will Free Speech's proposed donation requests be solicitations under the Act?

3. Will the activities described in this advisory opinion request require Free Speech to register and report to the Commission as a political committee?

Legal Analysis and Conclusions

Question 1. Will Free Speech's proposed advertisements be "express advocacy"?

Under the Commission's regulations, a communication expressly advocates the election or defeat of a clearly identified Federal candidate if it "[u]ses phrases such as 'vote for the President,' 're-elect your Congressman,' 'support the Democratic nominee,' 'cast your ballot for the Republican challenger for U.S. Senate in Georgia, 'Smith for Congress,' 'Bill McKay in '94,' 'vote Pro-Life' or 'vote Pro-Choice' accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, 'vote against

Old Hickory,' 'defeat' accompanied by a picture of one or more candidate(s), 'reject the incumbent,' or communications of campaign slogan(s) or individual word(s), which in context, can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say 'Nixon's the One,' 'Carter '76,' 'Reagan/Bush' or 'Mondale!'." 11 CFR 100.22(a).

Under the Commission's regulations, a communication also constitutes express advocacy if "[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because-- (1) [t]he electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) [r]easonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action." 11 CFR 100.22(b).

The Commission concludes that Free Speech's two "Financial Reform" advertisements are express advocacy under 11 CFR 100.22(a). The Commission further concludes that Free Speech's two "Health Care Crisis" advertisements, the "Gun Control" Facebook advertisement, and the "Ethics" advertisement are not express advocacy under 11 CFR 100.22.

A. The "Financial Reform" Radio and Newspaper Advertisements

> President Obama supported the financial bailout of Fannie Mae and Freddie Mac, permitting himself to become a puppet of the banking and bailout industries. What kind of person supports bailouts at the expense of average Americans? Not any kind we would vote for and neither should you. Call President Obama and put his antics to an end.[3]

The "Financial Reform" advertisements, which Free Speech proposes to air on the radio and run in newspapers, contain express advocacy under 11 CFR 100.22(a). This conclusion is supported by the Supreme Court's decision in *FEC v. Massachusetts Citizens For Life ("MCFL")*, 479 U.S. 238 (1986), which involved a flyer that included the phrase "EVERYTHING YOU NEED TO KNOW TO VOTE PRO-LIFE" and contained an exhortation to "VOTE PRO-LIFE" after identifying candidates who were pro-life. The Court held the flyer was express advocacy. Here, the "Financial Reform" advertisements state that "President Obama supported the financial bailout of Fannie Mae and Freddie Mac," and then ask "What kind of person supports bailouts at the expense of average Americans?" They answer the questions with "[n]ot any kind of person that we

[3] The script for the radio version of the Financial Reform advertisement is the same as the text of the print version. The only difference between the two, besides the format, is the newspaper advertisement's inclusion of a full-page picture of President Obama.

would vote for and neither should you." Thus, the advertisements are express advocacy: they identify a candidate (President Obama) with a position on an issue (bailouts) and then state that the viewers should vote against those who take that issue position ("What kind of person supports bailouts …? Not any kind we would vote for and neither should you."). Such a formulation "provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than 'Vote for Smith' does not change its essential nature." *MCFL*, 479 U.S. at 249.

Moreover, this conclusion is not altered by the final sentence: "Call President Obama and put his antics to an end." The advertisements contain two different statements directed at the viewer: (1) "Not any kind we would vote for and neither should you;" and (2) "Call President Obama and put his antics to an end." These are two different statements that make two different points; however, the addition of the statement, "Call President Obama and put his antics to an end," does not negate the fact that the advertisements contain express advocacy under 11 CFR 100.22(a). This is similar to *MCFL*, where the Court held that a "disclaimer" stating "[t]his special election edition does not represent an endorsement of any particular candidate" did not "negate [the] fact" that the flyer contained express advocacy. *MCFL*, 470 U.S. at 249.

B. The "Health Care Crisis" Radio and Newspaper Advertisements

> President Obama supports socialized medicine, but socialized medicine kills millions of people worldwide. Even as Americans disapproved of ObamaCare, he pushed ahead to make socialized medicine a reality. Put an end to the brutality and say no to socialized medicine in the United States.[4]

The "Health Care Crisis" advertisements, which Free Speech proposes to air on the radio and run in newspapers, are not express advocacy under 11 CFR 100.22. These advertisements criticize President Obama's health care policy and provide Free Speech's views on the issue ("socialized medicine kills millions of people worldwide"). The advertisements have no electoral references.

C. The "Gun Control" Facebook Advertisement

> (Picture of handgun, 110 pixels wide by 80 pixels tall)
> (Title: Stand Against Gun Control)
> Obama supports gun control. Don't trust him. Support Wyoming state candidates who will protect your gun rights.

[4] Like the script for the radio and print versions of the "Financial Reform" advertisements, the script for the two versions of the "Health Care Crisis" advertisements is the same. The only difference between the two advertisements, besides the format, is the newspaper advertisement's inclusion of a "[f]ull picture of a family picture torn in half."

The "Gun Control" Facebook advertisement is not express advocacy under 11 CFR 100.22. The advertisement criticizes President Obama's support of gun control and exhorts viewers to "[s]upport Wyoming state candidates." The advertisement has no Federal electoral references.

D. The "Ethics" Television Advertisement

Audio:	Video:
Who is President Obama?	Picture of President Obama shaking hands with Hugo Chavez.
He preaches the importance of high taxes to balance the budget, but nominates political elites who haven't paid theirs.	Fade to another picture of Obama giving State of the Union, superimposed "Obama Aims $1.4 Trillion Tax Increase at Highest Earners (San Francisco Chronicle, Feb. 14, 2011)"
He talks about budget and tax priorities, but passes a blind eye to nominees who don't contribute their fair share.	Cut to picture on left side of screen of Secretary of Treasury Timothy Geithner giving testimony, superimposed "Geithner apologizes for not paying taxes (CBS News, Feb. 18, 2009)"
Call President Obama and tell him you don't approve of his taxing behavior.	Picture fades in on right side of screen of Tom Daschle, superimposed "Tax Woes Derail Daschle's Bid for Health Chief (NPR, Feb. 3, 2009)"
	Fade to picture of President Obama and Michelle Obama enjoying themselves in Hawaii.

The "Ethics" television advertisement is not express advocacy under 11 CFR 100.22. The advertisement criticizes President Obama based on statements about his "budget and tax priorities" and his nominees' asserted lack of compliance with their tax obligations. The advertisement exhorts viewers to "[c]all President Obama and tell him

you don't approve of his taxing behavior." The advertisement contains no electoral references.

The Commission could not approve a response regarding the following advertisements by the required four affirmative votes:

E. The "Environmental Policy" Radio Advertisement

> President Obama opposes the Government Litigation Savings Act. This is a tragedy for Wyoming ranchers and a boon to Obama's environmentalist cronies. Obama cannot be counted on to represent Wyoming values and voices as President. This November, call your neighbors. Call your friends. Talk about ranching.

F. The "Environmental Policy" Facebook Advertisement

> (Picture of a Wyoming ranch, 110 pixels wide by 80 pixels tall)
> (Title: Learn About Ranching)
> Obama's policies are a tragedy for Wyoming ranchers, and he does not represent our values. This November, learn about ranching.

G. The Gun Control Television Advertisement

Audio:	Video:
Guns save lives.	Newspaper clippings with headlines describing self-defense with firearms fade in, piling up one atop another.
That's why all Americans should seriously doubt the qualifications of Obama, an ardent supporter of gun control.	Clippings dissolve to a picture of President Obama, and one newspaper headline below him: "President Obama defends attorney general regarding ATF tactics (LA Times, Oct. 6, 2011)"
This fall, get enraged, get engaged, and get educated. And support Wyoming state candidates who will protect your gun rights.	Dissolves to a picture of the Wyoming state flag, panning down to the Wyoming Capitol Building.

H. The Budget Reform Television Advertisement

AUDIO:	Video:
Congresswoman Lummis supported the Repeal Amendment, which would have restored fiscal sanity to our federal debt.	Picture of Representative Lummis, superimposed "Tea Party Pushes Amendment to Veto Congress (AOL News, Dec. 1, 2010)"
Congresswoman Lummis is brave in standing against the political elite and deserves your support. Make your voice heard.	Small videos of Representative Lummis fade in, speaking on news programs, meeting with people, etc.
Do everything you can to support Congresswoman Lummis this fall and work toward fiscal sanity.	Wyoming flag fades in the background, returning to original picture of Rep. Lummis.

I. The Educated Voter Votes on Principle Television Advertisement

Audio:	Video:
Across America, millions of citizens remain uninformed about the truth of President Obama.	Picture of President Obama shaking hands with Hugo Chavez.
Obama, a President who palled around with Bill Ayers.	Picture of Bill Ayers in Weather Underground days, superimposed "Bill Ayers Dishes on Hosting a Fundraiser for Barack Obama (Big Government, Nov. 29, 2011)."
Obama, a President who was cozy with ACORN.	"House votes to Strip Funding for ACORN (Fox News, Sept. 17, 2009)"
Obama, a President destructive of our natural rights.	Video of an ATF raid, fade to a video of TSA scanning individuals in line for airport.

Real voters vote on principle. Remember this nation's principles.	Fades to still shot of the Bill of Rights, superimposed "Remember this nation's principles."

Question 2. Will Free Speech's proposed donation requests be solicitations under the Act?

Two of Free Speech's proposed donation requests – entitled "Strategic Speech" and "Checking Boxes" – will not be solicitations under the Act. The Commission could not approve a response regarding the remaining two proposed donation requests – entitled "War Chest" and "Make Them Listen" – by the required four affirmative votes. *See* 2 U.S.C. 437c(c); 11 CFR 112.4(a).

The Act defines the term "contribution" to include "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." 2 U.S.C. 431(8)(A)(i); *see also* 11 CFR 100.52(a). The Act requires "any person" who "solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising" to include a specified disclaimer in the solicitation. 2 U.S.C. 441d(a); *see also* 11 CFR 110.11(a)(3). Requests for funds that "clearly indicate[] that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office" are solicitations under the Act. *FEC v. Survival Education Fund*, 65 F.3d 285, 295 (2d Cir. 1995) (analyzing communications for purposes of 2 U.S.C. 441d(a)).

A. The "Strategic Speech" Donation Request

> This fall, 23 Democrat incumbents are up for election in the U.S. Senate. Seven have already decided to retire, but some, like John Tester of Montana, haven't gotten the message. With your donation, we'll strategically speak out against the expansion of government-run healthcare and so-called 'clean energy' boondoggles like Solyndra, which Senators like Tester fully support. It's time to retire failed socialist policies.

The donation request clearly indicates how the funds requested will be spent: by "strategically speak[ing] out against the expansion of government-run healthcare and so-called 'clean energy' boondoggles like Solyndra." Although the donation request identifies Senator Tester as supporting these initiatives and as an incumbent Senator up for re-election who has not "gotten the message" that he should retire, it lacks language "clearly indicating that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office." *Survival Education Fund*, 65 F.3d at 295. Accordingly, this donation request is not a solicitation under the Act. *Survival Education Fund*, 65 F.3d at 294-95.

B. The "Checking Boxes" Donation Request

> 'Leading from behind,' President Obama takes advice from socialist staffers, usually choosing from a checklist of oppressive, debt-driven policies without even considering freedom-based and fiscally-conscious alternatives. Checking the right box on the November ballot is important, but like Obama's memos it's just not enough. Take the lead in making the message of Free Speech heard: your donation will inform real American leadership.

The donation request clearly indicates how the funds requested will be spent: "making the message of Free Speech heard" by "inform[ing] real American leadership." Although the request clearly identifies President Obama and refers to the November ballot, it lacks language "clearly indicating that the contributions will be targeted to the election or defeat of a clearly identified candidate for federal office." *Survival Education Fund*, 65 F.3d at 294-95. Accordingly, this donation request is not a solicitation under the Act.

The Commission could not approve a response regarding the following proposed donation request by the required four affirmative votes:

C. The "Make Them Listen" Donation Request

> In 2010, the Tea Party movement ushered in an historic number of liberty-friendly legislators. But President Obama and his pals in Congress didn't get the message: Stop the bailouts. No socialized healthcare. End oppressive taxes. But we won't be silenced. Let's win big this fall. Donate to Free Speech today.

D. The "War Chest" Donation Request

> Friends of freedom celebrated when the Supreme Court decided Citizens United. Now, more than ever, we can make the most effective use of your donations this coming fall. Donations given to Free Speech are funds spent on beating back the Obama agenda. Beating back Obama in the newspapers, on the airways, and against his $1 billion war chest.

Question 3. Will the activities described in this advisory opinion request require Free Speech to register and report to the Commission as a political committee?

The Commission could not approve a response to Question 3 by the required four affirmative votes. *See* 2 U.S.C. 437c(c); 11 CFR 112.4(a).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestors may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law.

On behalf of the Commission,

(signed)
Caroline C. Hunter
Chair

Exhibit E

BEFORE THE FEDERAL ELECTION COMMISSION

COMMON CAUSE
805 Fifteenth Street, NW, Suite 800
Washington, DC 20005
(202) 833-1200

PAUL S. RYAN
805 Fifteenth Street, NW, Suite 800
Washington, DC 20005
(202) 833-1200

v. MUR No. _____

UNKNOWN RESPONDENT(S)

COMPLAINT

1. This complaint is filed pursuant to 52 U.S.C. § 30109(a)(1) and is based on information and belief that one or more unknown foreign nationals made undisclosed expenditures, independent expenditures or disbursements in connection with the 2016 presidential election in violation of the Federal Election Campaign Act ("FECA"), 52 U.S.C. § 30101, *et seq.* and Commission regulations.

2. Specifically, based on published reports, complainants have reason to believe that one or more foreign nationals made undisclosed expenditures, independent expenditures or disbursements in connection with the 2016 presidential election by purchasing political advertising on Facebook using accounts likely operated out of Russia, in violation of 52 U.S.C. §§ 30121(a)(1)(C) and 30104(c), as well as and 11 C.F.R. § 110.20(f).

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).

FACTS

4. In January 2017, U.S. intelligence agencies published a declassified version of a highly classified assessment of Russian efforts to influence the 2016 U.S. presidential election.[1] The report states national intelligence community's assessment that "Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the US presidential election," that "Russia's goals were to undermine public faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency," and that the intelligence agencies "have high confidence in these judgments."[2] The intelligence assessment concluded that "Moscow's influence campaign followed a Russian messaging strategy that blends covert intelligence operations—such as cyber activity—with overt efforts by Russian Government agencies, state-funded media, third-party intermediaries, and paid social media users or 'trolls.'"[3] The intelligence assessment concluded that the "likely financier" of the Internet troll activity "is a close Putin ally with ties to Russian intelligence."[4]

5. On September 6, 2017, Facebook published a statement authored by the company's Chief Security Officer Alex Stamos explaining that the company had conducted an investigation into whether there was a connection between "Russian interference in the [2016 US] electoral process" and ads purchased on Facebook.[5]

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1 Office of the Director of National Intelligence, "Assessing Russian Activities and Intentions in Recent US Elections," NATIONAL INTELLIGENCE COUNCIL, January 6, 2017, *available at* https://www.dni.gov/files/documents/ICA_2017_01.pdf.

2 *Id.* at ii.

3 *Id.*

4 *Id.* at 4.

5 Alex Stamos, "An Update On Information Operations On Facebook," FACEBOOK NEWSROOM, September 6, 2017, *available at* https://newsroom.fb.com/news/2017/09/information-operations-update/.

> [Facebook] found approximately $100,000 in ad spending from June of 2015 to May of 2017 — associated with roughly 3,000 ads — that was connected to about 470 inauthentic accounts and Pages in violation of our policies. Our analysis suggests these accounts and Pages were affiliated with one another and likely operated out of Russia.[6]

In this internal investigation, Facebook "also looked for ads that might have originated in Russia" including, for instance, "ads bought from accounts with US IP addresses but with the language set to Russian."[7] In this part of its review, Facebook "found approximately $50,000 in potentially politically related ad spending on roughly 2,200 ads."[8]

6. On September 6, 2017, the *Washington Post* reported that Facebook on the same date told congressional investigators that the company "sold ads during the U.S. presidential campaign to a shadowy Russian company seeking to target voters" and that some of the ads "directly named Republican nominee Donald Trump and Democrat Hillary Clinton."[9] According to the *Washington Post*, "Facebook discovered the Russian connection as part of an investigation that began this spring looking at purchasers of politically motivated ads, according to people familiar with the inquiry. It found that 3,300 ads had digital footprints that led to the Russian company."[10]

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6 *Id.*

7 *Id.*

8 *Id.*

9 Carol D. Leonnig, Tom Hamburger and Rosalind S. Helderman, "Russian firm tied to pro-Kremlin propaganda advertised on Facebook during election," THE WASHINGTON POST, September 6, 2017, *available at* https://www.washingtonpost.com/politics/facebook-says-it-sold-political-ads-to-russian-company-during-2016-election/2017/09/06/32f01fd2-931e-11e7-89fa-bb822a46da5b_story.html?hpid=hp_rhp-top-table-main_russianads-410pm%3Ahomepage%2Fstory&utm_term=.018b2fe30844.

10 *Id.*

7. On September 6, 2017, the *New York Times* likewise reported Facebook's disclosure, noting that "some of the ads specifically mentioned the two candidates"—*i.e.*, Donald Trump and Hillary Clinton.[11]

SUMMARY OF THE LAW

8. FECA prohibits a foreign national from directly or indirectly making "an expenditure, independent expenditure, or disbursement for an electioneering communication." 52 U.S.C. § 30121(a)(1)(C).

9. The Commission regulation implementing the statutory foreign national expenditure ban provides that a "foreign national shall not, directly or indirectly, make any expenditure, independent expenditure, or disbursement in connection with any Federal, State, or local election." 11 C.F.R. § 110.20(f).

10. FECA defines "foreign national" as a "foreign principal" or "an individual who is not a citizen of the United States or a national of the United States." 52 U.S.C. § 30121(b).

11. FECA defines "expenditure" to include "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election[.]" 52 U.S.C. § 30101(9)(A)(i).

12. FECA defines "independent expenditure" to mean an expenditure by a person "expressly advocating the election or defeat of a clearly identified candidate; and . . . that is not made in concert or cooperation with or at the request or suggestion" of a candidate or party committee. 52 U.S.C. § 30101(17).

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[11] Scott Shane and Vindu Goel, "Fake Russian Facebook Accounts Bought $100,000 in Political Ads," THE NEW YORK TIMES, September 6, 2017, *available at* https://www.nytimes.com/2017/09/06/technology/facebook-russian-political-ads.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region&region=top-news&WT.nav=top-news.

13. Commission regulation defines "expressly advocating" to include any communication that uses phrases such as "support the Democratic nominee," "Smith for Congress," "defeat" accompanied by a picture of a candidate, or communications that "in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say 'Nixon's the One,' 'Carter '76,' 'Reagan/Bush' or 'Mondale!'" 11 C.F.R. § 100.22(a). Commission regulation further defines "expressly advocating" to include any communication when:

> [T]aken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because . . . [t]he electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and . . . [r]easonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

Id. at § 100.22(b).

14. Commission regulation defines "disbursement" to include "any purchase or payment" made by any person that is subject to FECA. 11 C.F.R. § 300.2(d).

15. FECA defines "person" to include an "individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons[.]" 52 U.S.C. § 30101(11).

16. FECA requires "[e]very person (other than a political committee) who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year [to] file a statement" including information regarding "all contributions received by such person," as well as information "indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved" and "a

certification whether or not such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate." 52 U.S.C. § 30104(c).

CAUSES OF ACTION

COUNT I:
ONE OR MORE UNKNOWN FOREIGN NATIONALS MADE EXPENDITURES, INDEPENDENT EXPENDITURES OR DISBURSEMENTS IN CONNECTION WITH THE 2016 PRESIDENTIAL ELECTION IN VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT

17. Federal law prohibits any foreign national from directly or indirectly making any expenditure, independent expenditure, or disbursement in connection with any election. 52 U.S.C. § 30121(a)(1)(C), 11 C.F.R. § 110.20(f).

18. Based on published reports, there is reason to believe that one or more unknown Russian foreign nationals made expenditures, independent expenditures or disbursements by purchasing from Facebook in 2015 and/or 2016 political advertising directly naming 2016 presidential candidates Hillary Clinton and Donald Trump in violation of 52 U.S.C. § 30121(a)(1)(C) and 11 C.F.R. § 110.20(f).

COUNT II:
ONE OR MORE UNKNOWN FOREIGN NATIONALS FAILED TO FILE DISCLOSURE REPORTS FOR EXPENDITURES, INDEPENDENT EXPENDITURES OR DISBURSEMENTS IN CONNECTION WITH THE 2016 PRESIDENTIAL ELECTION IN VIOLATION OF THE FEDERAL ELECTION CAMPAIGN ACT

19. Federal law requires every person who makes independent expenditures in an aggregate amount or value in excess of $250 during a calendar year to file a disclosure statement with the Commission including information regarding contributions received by such person, information indicating whether the independent expenditure is in support of, or in opposition to, the candidate involved and a certification whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or

suggestion of, any candidate or any authorized committee or agent of such candidate. 52 U.S.C. § 30104(c).

20. Based on published reports, there is reason to believe that one or more unknown Russian foreign nationals made expenditures, independent expenditures or disbursements by purchasing from Facebook in 2015 and/or 2016 political advertising directly naming 2016 presidential candidates Hillary Clinton and Donald Trump and did not file required disclosure statements for such expenditures, independent expenditures or disbursements in violation of 52 U.S.C. § 30104(c).

PRAYER FOR RELIEF

21. Wherefore, the Commission should find reason to believe that one or more unknown foreign nationals violated 52 U.S.C. § 30101, *et seq.*, including 52 U.S.C. §§ 30121 and 30104, 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.

September 7, 2017

Respectfully submitted,

Common Cause, by
Paul S. Ryan
805 Fifteenth Street, NW, Suite 800
Washington, DC 20005
(202) 833-1200

Paul S. Ryan
805 Fifteenth Street, NW, Suite 800
Washington, DC 20005
(202) 833-1200

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 7th day of September 2017.

Karen B. Watson
Notary Public

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

Exhibit F

I

116TH CONGRESS
1ST SESSION

H. R. 2135

To prevent foreign adversaries from influencing elections by prohibiting foreign nationals from purchasing at any time a broadcast, cable, or satellite communication that mentions a clearly identified candidate for Federal office.

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2019

Ms. SLOTKIN (for herself and Ms. STEFANIK) introduced the following bill; which was referred to the Committee on House Administration

---

A BILL

To prevent foreign adversaries from influencing elections by prohibiting foreign nationals from purchasing at any time a broadcast, cable, or satellite communication that mentions a clearly identified candidate for Federal office.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Preventing Adversaries Internationally from Disbursing Advertising Dollars Act'' or the ''PAID AD Act''.

SEC. 2. PURPOSE.

The purpose of this Act is to protect the integrity of American democracy by expanding the scope of the prohibition on political advertising by foreign principals in order to uphold the well-established standard of the United States Supreme Court that foreign nationals may lawfully be excluded from participating in certain electoral activities.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the growing threat of malicious interference in our elections by foreign actors requires the Congress and the Federal Election Commission to take meaningful action to ensure that laws and regulations protect against influence by foreign nationals in activity fundamental to our democracy;

(2) the Supreme Court has long held that there is a compelling national interest in preventing foreign influence in the United States political process and that foreign citizens lack a ''constitutional right to participate in, and thus may be excluded from, activities of democratic self-government''; and

(3) the current prohibition on foreign nationals contributing to political campaigns and advertisements must be updated.

SEC. 4. EXPANSION OF LIMITATION ON FOREIGN NATIONALS.

(a) DISBURSEMENTS DESCRIBED.—Section 319(a)(1) of the Federal Election Campaign Act of 1971 (52 U.S.C. 30121(a)(1)) is amended—

(1) by striking ''or'' at the end of subparagraph (B); and

(2) by striking subparagraph (C) and inserting the following:

''(C) an expenditure;

''(D) an independent expenditure;

''(E) a disbursement for an electioneering communication (within the meaning of section 304(f)(3));

''(F) a disbursement for a paid internet or paid digital communication that refers to a clearly identified candidate for election for Federal office and is disseminated within 60 days before a general, special or runoff election for the office sought by the candidate or 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate for the office sought by the candidate;

''(G) a disbursement for a broadcast, cable or satellite communication, or for a paid inter-

net or paid digital communication, that promotes, supports, attacks or opposes the election of a clearly identified candidate for Federal, State, or local office (regardless of whether the communication contains express advocacy or the functional equivalent of express advocacy); or

"(H) a disbursement for a broadcast, cable, or satellite communication, or for any communication which is placed or promoted for a fee on an online platform, that discusses a national legislative issue of public importance in a year in which a regularly scheduled general election for Federal office is held, but only if the disbursement is made by a foreign principal who is a government of a foreign country or a foreign political party or an agent of such a foreign principal under the Foreign Agents Registration Act of 1938.".

(b) DEFINITION OF ONLINE PLATFORM.—Section 319 of such Act (52 U.S.C. 30121) is amended by adding at the end the following new subsection:

"(c) ONLINE PLATFORM.—As used in this section, the term 'online platform' means any public-facing website, web application, or digital application (including a social network, ad network, or search engine) which—

"(1) sells qualified political advertisements; and

"(2) has 50,000,000 or more unique monthly United States visitors or users for a majority of months during the preceding 12 months.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to disbursements made on or after the date of the enactment of this Act.

○

Exhibit G

FEC RECORD: REGULATIONS

Notice of proposed rulemaking on internet communication disclaimers and the definition of "public communication"

April 5, 2018

On March 26, 2018, the Commission published a Notice of Proposed Rulemaking (NPRM) on internet communication disclaimers and the definition of "public communication" in the Federal Register (83 Fed. Reg. 12864). The NPRM seeks comment on proposed revisions to the disclaimer regulations as applied to public communications over the internet.

Background

Under the *Federal Election Campaign Act* (the Act) and Commission regulations, a disclaimer must appear on certain communications in order to identify who paid for the communication and, where applicable, whether the communication was authorized by a candidate. With some exceptions, the Act and Commission regulations require disclaimers for public communications that (1) are made by a political committee, or (2) expressly advocate the election or defeat of a clearly identified federal candidate or solicit a contribution.

The term "public communication" does not include internet communications other than communications placed for a fee on another person's website. Communications placed for a fee on another person's website are subject to disclaimer requirements as well.

For those communications requiring disclaimers, each disclaimer "must be presented in a clear and conspicuous manner, to give the reader, observer or, listener adequate notice of the identity" of the communication's sponsor.

On November 2, 2016, the Commission published a notice seeking comment on a number of technology related proposals, including updating the term "Web site" in the definition of "public communication" at 11 CFR 100.26. The Commission proposed to update the definition by adding communications placed for a fee on another person's "internet-enabled device or application" in addition to those on websites.

On October 13, 2011, the Commission published an ANPRM seeking comment on whether and how to revise 11 CFR 110.11 concerning disclaimers on certain paid internet communications.On October 18, 2016, the Commission reopened the comment period on the internet disclaimers ANPRM to consider legal and technological developments since the 2011 notice was published. In October 2017, the Commission reopened the comment period on the disclaimer ANPRM to consider the disclaimer requirements in light of developments since the close of the last comment period.

The Commission's NPRM seeks comment on two alternative proposals to revise its regulations to include disclaimers for paid video, audio, text and graphic advertisements that are distributed over the internet. The Commission is interested in comments on the interaction between the proposed revised definition of "public communication" and the proposed alternative disclaimer rule proposals. Comments are welcome on any aspect of the proposals, including how differences between online platforms, providers, and presentations may affect the application of any of the proposed disclaimer rules. In addition, the Commission welcomes comment on whether the proposed rules allow for flexibility to address future technological developments while honoring the important function of providing disclaimers to voters.

Proposed rule revisions

Definition of public communication

The Commission is reopening the definition of "public communication" in 11 CFR 100.26 for the limited purpose of determining whether to revise the current definition to include communications placed for a fee on another person's "internet-enabled device or application" in addition to those placed for a fee on another person's website. The Commission invites comment on whether the additional language would be a clear and technically accurate way to refer to the various media through which paid internet communications are and will be sent and received.

Disclaimers on public communications distributed over the internet

The Commission proposes two alternatives for addressing internet public communications in new paragraph 11 CFR 110.11(c)(5); the second of these alternatives also proposes to add an exception from the disclaimer rules at 11 CFR 110.11(f)(1) for some internet public communications. The Commission proposes adding provisions to clarify the disclaimers required for different forms of internet public communications and to identify when paid internet communications may employ a modified approach to the disclaimer requirements.

Internet communications with audio and video components

Alternative A would apply the specific disclaimer requirements that now apply to radio and television communications to public communications distributed over the internet that contain audio or video components. Thus, for example, paid internet communications with a video component would be required to satisfy the "stand by your ad" authorization statements under 11 CFR 110.11(c)(3) and (c)(4), in addition to the general requirements that apply to all public communications requiring disclaimers. Alternative B would require disclaimers on internet communications with audio and video components to meet the same general requirements that apply to all public communications requiring disclaimers, without imposing the additional "stand by your ad" disclaimer requirements.

Internet communications with text and graphic components

Alternative A proposes to adapt the specific disclaimer requirements that now apply to printed public communications to apply to text and graphic public communications distributed over the internet in addition to the general requirements that apply to all public communications requiring disclaimers. Alternative B proposes to treat graphic, text, audio and video communications on the internet equally for disclaimer purposes. As a result, Alternative B would require disclaimers on internet communications with text or graphic components to meet the same general requirements that apply to all public communications requiring disclaimers, without imposing additional specific disclaimer requirements that may apply to "printed" communications.

Adapted disclaimers for text and graphic communications over the internet

Alternatives A and B both propose that some public communications distributed over the internet may satisfy the disclaimer requirements by an "adapted disclaimer," or abbreviated disclaimer on the face of the communication in conjunction with a technological mechanism that leads to a full disclaimer, rather than providing a full disclaimer on the face of the communication itself. Alternative A would allow adapted disclaimers for certain small text or graphic public communications distributed over the internet. Alternative B would allow adapted disclaimers for certain audio and video internet public communications as well. Alternative A allows the use of an adapted disclaimer when a full disclaimer

cannot fit on the face or text of a graphic internet communication due to technological constraints. Alternative B allows the use of an adapted disclaimer when a full disclaimer would occupy more than a certain percentage (10%) of any internet public communication's available time or space. Both proposals would require that any technological mechanism used to provide access to a full disclaimer must do so within one step from the adapted disclaimer. Both proposals provide a list of examples of technological mechanisms for adapted disclaimers.

Exceptions to disclaimer rules for internet public communications

Finally, Alternative B proposes to exempt from the disclaimer requirement any internet public communication that can provide neither a disclaimer in the communication itself nor an adapted disclaimer. This exception is intended to replace the existing small items and impracticable exceptions for internet public communications.

Public comments

All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's website at sers.fec.gov/fosers/rulemaking.htm?pid=74739. Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn: Neven F. Stipanovic, Acting Assistant General Counsel, 1050 First Street NE, Washington, DC 20463. All comments must include the full name, city, and state of each commenter or they will not be considered. The Commission will post all comments to its website and in the FEC's Public Records Office at the conclusion of the comment period.

Citations

Statute:

52 U.S.C. § 30120(a)
Identification of funding and authorizing sources

52 U.S.C. § 30101(22)
Definition of public communication

Regulations:

11 CFR 100.26
Definition of public communication

11 CFR 110.11

Communications; advertising; disclaimers

Resources

- Reopening of comment period: Federal Register notice (October 10, 2017) [PDF]
- Reopening of comment period and notice of hearing: Federal Register notice (October 18, 2016) [PDF]
- Advance Notice of Proposed Rulemaking: Federal Register notice (October 13, 2011) [PDF]
- Notice of Proposed Rulemaking on technological modernization: Federal Register notice (November 2, 2016) [PDF]

AUTHOR

Zainab Smith

Communications Specialist

Read next:

Petition for rulemaking on use of campaign funds by former candidates and officeholders

Related:

Explore legal resources »

Exhibit H

AGENDA DOCUMENT NO. 19-26-A
AGENDA ITEM
For the meeting of
June 20, 2019

CHAIR ELLEN L. WEINTRAUB
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 13, 2019

MEMORANDUM

TO: Commission Secretary

FROM: Ellen L. Weintraub, Chair ELW

SUBJECT: Internet Ad Disclaimers Rulemaking Proposal

Americans deserve transparency when it comes to internet communications, especially as we face the growing threat of online disinformation campaigns and false political advertising. The FEC needs to do its part to combat these threats and make it harder for foreign adversaries to interfere in our elections with their influence operations. Better rules for internet ads are a small but necessary step. Internet ad disclaimers will enable the public to identify the sources of political advertising on the internet.

The Commission has been trying to address this issue since 2011, while internet political ads proliferated without guidance. We witnessed a 260% increase in digital ads from the 2014 midterm elections to the 2018 midterm elections. Spending on digital political ads has reached roughly $900 million. And interest in the Commission's rulemaking has reached its peak. When the Commission re-opened the comment period for this rulemaking in 2017 and 2018, it received more than 314,000 comments combined. The overwhelming sentiment of the commenters favored updating our disclaimer rules. We held public hearings and information sessions and listened to hours upon hours of testimony. All that good work should yield something useful.

It's long past time to act. I am attaching a proposal that I would support. I hope that my colleagues will engage with me in this effort to bring greater transparency to online political advertising. I request that this memorandum and the attached draft be made public immediately and placed on the Commission's next Open Meeting Agenda, for June 20, 2019.

INTERNET AD DISCLAIMERS RULE PROPOSAL

June 20, 2019

§100.26 Public communication (52 U.S.C. 30101(22)).

Public communication means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. The term *general public political advertising* shall not include communications over the internet, except for (1) communications produced for a fee and those placed or promoted for a fee on another person's website or digital device, application, service, or platform**,** and (2) such communications included in section (1) that are then shared by or to a website or digital device, application, service, or platform.

§ 110.11 Communications; advertising; disclaimers (52 U.S.C. 30120).

*** * *

(c) * * *

(5) *Specific requirements for internet public communications.*

(i) For purposes of this section, *internet public communication* means any communication transmitted through the internet that is

(A) produced for a fee or is placed or promoted for a fee on another person's website or digital device, application, service, or platform, and

(B) such communications included in section (A) that are then shared by or to a website or digital device, application, service, or platform.

(ii) In addition to the general requirements of paragraphs (b) and (c)(1) of this section, a disclaimer required by paragraph (a) of this section that appears on an internet public communication must comply with all of the following:

(A) An internet public communication with text or graphic components but without any video component must include the full disclaimer required by paragraph (c)(5)(ii)(A) except as provided by paragraph (g) of this section. Such a communication must contain a disclaimer that is of sufficient type size to be clearly readable by the recipient of the communication. A disclaimer under this paragraph that appears in letters at least as large as the majority of the other text in the communication satisfies the size requirement of this paragraph. The disclaimer must be displayed with a reasonable degree of color contrast between the background and the text of the disclaimer. The disclaimer satisfies the color contrast requirement of this paragraph if it is displayed in black text on a white background or if the degree of color contrast between the background and the text of the disclaimer is no less than the color contrast between the background and the largest text used in the communication.

(B) An internet public communication with an audio component but without video, graphic, or text components must include the statement described in paragraphs (c)(3)(i) and (iv) of this section if authorized by a candidate, or the statement described in paragraph (c)(4) of this section if not authorized by a candidate.

(C) An internet public communication with a video component must include the statement described in paragraphs (c)(3)(ii)–(iv) of this section if authorized by a candidate, or the statement described in paragraph (c)(4) of this section if not authorized by a candidate. If either the video or audio components of the communication require an action by the viewer to be launched or presented, the full disclaimer required by paragraph (c)(5)(ii)(A) must appear on the face of the communication without any action taken by the viewer.

* * *

(f) *Exceptions.*

(1) This paragraph (f) does not apply to internet public communications.

(2) The requirements of paragraphs (a) through (e) of this section do not apply to the following:

(i) Bumper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be conveniently printed;

(ii) Skywriting, water towers, wearing apparel, or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable; or

(iii) Checks, receipts, and similar items of minimal value that are used for purely administrative purposes and do not contain a political message.

(rename (f)(2) to (f)(3))

(g) *Specific exceptions for internet public communications.*

(1) Definitions. For purposes of this section,

(i) *Indicator* means any visible or audible element associated with an internet public communication that is presented in a clear and conspicuous manner and gives notice to persons reading, observing, or listening to the internet public communication that they may read, observe, or listen to a disclaimer satisfying the general requirements of paragraphs (b) and (c)(1) of this section through a technological mechanism. An indicator may take any form including, but not limited to, words, images, sounds, symbols, and icons;

(ii) *Technological mechanism* means any use of technology that enables the person reading, observing, or listening to an internet public communication to read, observe, or listen to a disclaimer satisfying the general requirements of paragraphs (b) and (c)(1) of this section after no more than one action by the recipient of the internet public communication. A technological mechanism may take any form including, but not limited to, hover-over mechanisms, pop-up screens, scrolling text, rotating panels, and hyperlinks to a landing page;

(iii) *Abbreviated disclaimer* means a condensed version of the disclaimer described by paragraphs (b) and (c)(1) of this section. An abbreviated disclaimer must clearly state that the internet public communication is paid for and identify the person or persons who paid for the internet public

communication using their full name or a clearly recognized abbreviation or acronym by which the person or persons are commonly known; and

(iv) *Adapted disclaimer* means an abbreviated disclaimer and an indicator together with a technological mechanism. An adapted disclaimer must consist of characters of sufficient size to be clearly readable by a recipient of the internet public communication.

(2) The requirements of paragraph (c)(5) of this section do not apply to internet public communications with text or graphic components but without any video component when it is impracticable to provide a disclaimer described by paragraphs (b) and (c)(1) of this section due to factors inherent to the technology, in which case an adapted disclaimer must be used on the face of the communication.

(rename (g) to (h))

Exhibit I

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR: 7205
DATE COMPLAINT FILED: 12/02/2016
DATE OF NOTIFICATION: 12/09/2016
LAST RESPONSE RECEIVED: N/A
DATE ACTIVATED: 05/03/2017

ELECTION CYCLE: 2016
EXPIRATION OF SOL: 11/15/2021 – 12/13/2021

COMPLAINANTS:	Phillip Wiglesworth Amy Rebecca James
RESPONDENTS:	Jill Stein for President and Steven Welzer in his official capacity as treasurer
RELEVANT STATUTES AND REGULATIONS:	52 U.S.C. § 30121(a)(2) 11 C.F.R. § 100.91 11 C.F.R. § 100.151
INTERNAL REPORTS CHECKED:	Disclosure Reports
AGENCIES CHECKED:	None

I. INTRODUCTION

The Complaint alleges that Jill Stein for President ("JSP") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by accepting foreign national donations in connection with its recount efforts following the 2016 presidential election. Based on the available information, we recommend that the Commission dismiss the Complaint and close the file in this matter.

II. FACTUAL BACKGROUND

Jill Stein was the Green Party's candidate for President of the United States during the 2016 general election.[1] After the election, Stein announced her intention to challenge the

[1] *See* FEC Form 2, Statement of Candidacy, Jill Stein (July 9, 2015).

presidential election results in Wisconsin, Michigan, and Pennsylvania.[2] JSP subsequently began raising money to effectuate the recounts, and ultimately raised more than $7,000,000 for the recount effort.[3] JSP filed a recount petition with the Wisconsin Election Commission, and a recount was conducted in that state.[4] Although JSP attempted to have recounts conducted in Pennsylvania and Michigan, both of these attempted recounts were stopped by judicial order.[5]

The Complaint alleges that an unknown number of donors to JSP's recount fund were foreign nationals.[6] In support, the Complaint notes that the JSP website permitted donors to announce their donation through various social media platforms, including Twitter, and asserts that several Twitter users who announced their donations appear to not be U.S. citizens.[7] The Complaint provides a 116-page exhibit (the "Exhibit") consisting of screenshots of tweets from 45 Twitter users who apparently donated to the recount effort.[8] Each tweet states "I just donated to #Recount2016 and to help ensure election integrity. Join me."[9] Most of the 45 Twitter users

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[2] *See* Compl. at 5; *see also Greens Demand Recounts in Wisconsin, Michigan, and Pennsylvania,* http://www.jill2016.com/greens_demand_recounts (last visited Feb. 27, 2018) ("*Greens Demand Recounts,* www.jill2016.com").

[3] *See* 2016 Year-End Report, Jill Stein for President (Feb. 1, 2017); *see also Greens Demand Recounts,* www.jill2016.com ("We need your help to make sure your votes were counted accurately on Election Day. Please donate now to help maintain integrity in our elections. This effort to ensure election integrity is in your hands! In true grassroots fashion, we're turning to you, the people, and not big-money corporate donors to make this happen.")

[4] *See Jill Stein Files Recount Petition in Wisconsin* (Nov. 25, 2016), http://www.jill2016.com/recountfilingwi. JSP disclosed a $3,499,689 recount filing fee paid to Wisconsin on November 29, 2016. *See* 2016 Year-End Report at 298, Jill Stein for President. A separate Complaint alleges that Stein's recount effort resulted in excessive, in-kind contributions to Hillary for America ("HFA"), that HFA accepted these contributions by coordinating with JSP, and that donors to JSP for the recount who also contributed to HFA may have made excessive contributions to HFA. *See* MUR 7202, Compl. at 1-4.

[5] *See Stein v. Cortes*, 223 F. Supp. 3d 423, 426 (E.D. Pa. 2016); *Attorney Gen. v. Bd. of State Canvassers*, 318 Mich. App. 242, *appeal withdrawn*, 500 Mich. 907, 887 N.W.2d 785 (2016).

[6] Compl. at 5-7.

[7] *Id.*

[8] *Id.*, Ex. A. The Office of General Counsel has compiled an attachment to this report that summarizes the most relevant information from the Exhibit. *See* Attach. 1.

[9] *See, e.g.*, Compl. at 13, 16, & 18.

included in the Exhibit entered a foreign location in the optional "Location" field in their Twitter profiles, which the Complaint cites as evidence that the apparent donors may be foreign nationals.[10] The Exhibit also includes, for some of the 45 Twitter users, screenshots and printouts of other tweets or other websites linked from their Twitter profiles that show purported foreign activity or residence in support of the allegation that they may not be U.S. citizens.[11] The Complaint acknowledges that some of the Twitter users included in the Exhibit might be U.S. citizens, but also notes that not all donors may have used JSP's web tool to announce their donations on Twitter.[12]

A review of the archived version of JSP's website shows that its donation page did not mention the prohibition on foreign national contributions.[13] JSP's current donation page requires certain identifying information, such as address, from all contributors.[14]

JSP did not respond to the Complaint.

III. LEGAL ANALYSIS

The Act and Commission regulations prohibit a foreign national from making a contribution or donation, directly or indirectly, in connection with a federal, state, or local election.[15] A "foreign national" includes an individual who is not a citizen of the United States

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10 *Id.*; *see also* Attach. 1.

11 Compl., Ex. A.

12 *Id.* at 5-7.

13 *See Jill 2016 (Donate)*, https://web.archive.org/web/20170717144019/https://jillstein nationbuilder.com/donate (archived version from Nov. 22, 2016).

14 *See Jill 2016 (Donate)*, https://www.jill2016.com/donate (last visited Mar. 1, 2018). It does not appear that the archived version of this section of the page is available.

15 52 U.S.C. § 30121(a)(1)(A); 11 C.F.R. § 110.20(b).

or a national of the United States and who is not lawfully admitted for permanent residence.[16] The Act further prohibits persons from soliciting, accepting, or receiving a contribution or donation from a foreign national.[17] The foreign national prohibition applies to funds that are raised in connection with a recount.[18]

The Complaint, in support of its allegation that JSP accepted foreign national donations, provided various screenshots of Twitter profiles and tweets for individuals who claimed to have donated to JSP for the recount.[19] Most of the profiles appear to indicate that the user is located outside the United States.[20] At least one of the profiles of a purported JSP donor expressly states that the user is not a United States citizen: the Twitter biography for user @MaxWrite states that Max is Canadian.[21] Further, in response to @MaxWrite's tweet about donating to JSP's recount effort, the following exchange occurred between @MaxWrite and another Twitter user:

> @harleytime1: Are you even an American citizen?
>
> @MaxWrite: Nope . . . Doesn't mean I shouldn't lend a hand.[22]

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[16] 52 U.S.C. § 30121(b)(2). The term "foreign national" also includes "a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country." 52 U.S.C. § 30121(b)(1); 22 U.S.C. § 611(b).

[17] 52 U.S.C. § 30121(a)(2). The Commission's regulations employ a "knowingly" standard here. 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited foreign national contribution or donation if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds originated from a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the funds originated from a foreign national but failed to conduct a reasonable inquiry. 11 C.F.R. § 110.20(a)(4).

[18] *See* 11 C.F.R. §§ 100.91, 100.151 (exempting funds raised during a recount from the definitions of "contribution" and "expenditure," respectively, but noting that 11 C.F.R. § 110.20, the foreign national prohibition, shall apply); Advisory Op. 2006-24 (NRSC & DSCC) at 5.

[19] Compl., Ex. A.

[20] *Id.*; *see also* Attach. 1.

[21] Compl. at 12.

[22] *Id.* at 14.

Information concerning a few of the other purported donors suggests that the individual is a foreign national. For example, the Exhibit contains screenshots of Twitter user Khanh Treiu's tweet announcing a donation to JSP, Treiu's Twitter profile linking to an IMDb profile page at a Montenegro domain, and the IMDb page.[23] According to the linked IMDb profile, most of Trieu's biographical information and film work, dating back to when Trieu was six years old, relate to the country of Australia, but neither the Twitter profile nor the IMDb profile indicates Trieu's country of birth or nationality.[24] Similarly, the Exhibit contains screenshots of Twitter user Carl Robinson's tweet announcing a donation to JSP, and a cached version of Robinson's Twitter profile shows a "Paris, France" location.[25] Robinson's current Twitter profile contains a link to a LinkedIn profile, which indicates that all of Robinson's educational and work experience, dating back to public school graduation in 1998, took place in either the United Kingdom, France, or China; Robinson's work history includes founding a language school in Beijing in which "[a]ll our teachers were native speakers from the United Kingdom."[26] Neither Robinson's Twitter profile nor LinkedIn profile indicates country of birth or nationality. Likewise, the Exhibit contains a screenshot of Twitter user Shabbir Hussain's profile showing a tweet announcing a donation to JSP, a "Karachi" location, and a link to Hussain's Facebook

[23] *Id.* at 15 (showing Trieu's Twitter profile link to imdb me/khanhtrieu); *see also Go Daddy (About .me Domains)*, https://www.godaddy.com/help/about-me-domains-4409 (last visited Feb. 26, 2018) (describing the .me domain as a top level domain available to anyone that represents both Montenegro and you). Trieu's IMDb.me link is still in the Twitter profile and automatically redirects to IMDb.com, which describes itself as "the world's most popular and authoritative source for movie, TV and celebrity content." *About IMDb.com*, http://www.imdb.com/pressroom/?ref_=ft_pr (last visited Feb. 26, 2018).

[24] Compl. at 17. Other IMDb profiles contain the actor's birthplace and citizenship. *See generally IMDb (Daniel Day-Lewis: Biography)*, http://www.imdb.com/name/nm0000358/bio?ref_=nm_ov_bio_sm (last visited Feb. 26, 2018) (noting Day-Lewis's English birthplace and Irish citizenship).

[25] *See* Compl. at 50.

[26] *See Carl Robinson* (2018) LinkedIn profile, https://www.linkedin.com/in/carlrobins0n/ (last visited Feb. 27, 2018).

page.[27] The Exhibit also includes a screenshot of Hussain's Facebook profile indicating hometown, current city, and educational experience all located in Pakistan.[28] Neither Hussain's Twitter profile nor Facebook profile indicates country of birth or nationality.

The available information also suggests, however, that some of the apparent donors included in the Exhibit are U.S. citizens. For example, the Exhibit includes screenshots of Twitter user Jillian's tweet announcing a donation to JSP, Twitter profile containing a biography describing herself as a "Minneapolis girl lost somewhere in Scotland-land" and a link to her Instagram page, and the Instagram page describing herself as a "Minnesota girl lost somewhere in Scotland."[29] Similarly, the Exhibit includes screenshots of Twitter user Nicole Thomas Wyeth's tweet announcing a donation to JSP, Twitter profile showing a "Folkstone, England" location, and biography description as an "American with British soul & sense of humour. . . ."[30] The Exhibit also includes screenshots of Twitter user Lynn Morrison's tweet announcing a donation to JSP, Twitter profile with a link to her webpage, and a screenshot of that webpage.[31] The About Me section of that webpage describes her as an "American raising two prim princesses with her obnoxiously skinny Italian husband in Oxford, England."[32]

JSP's disclosure reports do not show any itemized donations or contributions from any of the names that are discernible from the Twitter profiles included in the Exhibit. Thus, while the available information provides a reasonable inference that a small number of the 45 Twitter users

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27 *See* Compl. at 62.

28 *See id.* at 64.

29 *Id.* at 22.

30 *Id.* at 25-26.

31 *Id.* at 70-72.

32 Lynn Morrison, *The Nomad Mom Diary (About Me)*, http://nomadmomdiary.com/lynn-morrison/ (last visited Feb. 26, 2018).

are foreign nationals, while also providing an inference that others are United States citizens, the only information suggesting that the users donated to the recount fund are the user's tweets. Further, the Complaint's allegations of foreign national interference do not contemplate safeguards JSP may have implemented to identify potential foreign national contributions. Though we do not know what, if any, specific safeguards JSP may have had in place, it appears that JSP's current donation page requests identifying information, including address, from contributors, which would have allowed JSP to identify potential foreign national donations.

The information shows that only a small number of the identified Twitter users may be foreign nationals and JSP's disclosure reports do not show donations or contributions from the names that are discernible from the Twitter profiles, suggesting that any donations may have been below the $200 itemization threshold.[33] Thus it appears that if any of these individual were foreign nationals and they actually donated to the recount fund, those donations were likely *de minimis*. In light of these circumstances, we do not believe that an investigation of the Complaint's allegations would be a prudent use of the Commission's limited resources.

Accordingly, we recommend that the Commission exercise its prosecutorial discretion and dismiss the allegation that Jill Stein for President and Steven Welzer in his official capacity as treasurer violated 52 U.S.C. § 30121(b)(2) and close the file in this matter.[34]

IV. RECOMMENDATIONS

1. Dismiss the allegations that Jill Stein for President and Steven Welzer in his official capacity as treasurer violated 52 U.S.C. § 30121(b)(2);

2. Approve the attached Factual and Legal Analysis;

3. Approve the appropriate letters; and

[33] *See* 52 U.S.C. § 30104(b)(3)(A).

[34] *See Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

4. Close the file.

Lisa J. Stevenson
Acting General Counsel

3/2/18
Date

Kathleen M. Guith
Kathleen M. Guith
Associate General Counsel for Enforcement

Mark Allen
Mark Allen
Assistant General Counsel

Christopher L. Edwards
Christopher L. Edwards
Attorney

Attachments:
(1) OGC Chart Summarizing Information in Complainant's Exhibit A

MUR 7205 – Summary of Information in Complainant's Exhibit A

Twitter Profile Name and Handle	Location[1]	Additional Relevant Information
"Max" "@MaxWrite"	Toronto, Canada	Twitter biography describes her as Canadian. The Exhibit also contains a tweet from another user saying "[a]re you even an American citizen?" @MaxWrite responds by saying "[n]ope . . . Doesn't mean I shouldn't lend a hand."
"Khanh Trieu" "@khanhtrieu"	Sydney	The Exhibit contains his IMDb[2] profile page, which lists biographical information relating to Australia and his work on Australian films/television shows.
"Mr. P" "@MrPoli80"	La Herradura, Huixquilucan	N/A
"Pinky,RunLaughEatPie" "@pinkypie"	Arnhem, the Netherlands	Twitter biography says "#english # nederlands #US #NL # expat. . . ."
"Jillian" "@Jillian"	Edinburgh, Scotland	Twitter biography says "Minneapolis girl lost somewhere in Scotland-land. . . ." Also provides screenshot from her Instagram account which says "Minnesota girl lost somewhere in Scotland. . . ."
"Nicole Thomas Wyeth" "@8amNoCoffee"	Folkestone, England	Twitter biography says "American with British soul and sense of humour. . . ."
"katycat" "@_jobsperry"	Brazil	In response to her tweet that she donated to JSP's recount fund, another user tweeted to her "why do you care how our elections are conducted? And who are you to say that they are not held with integrity?"
"Alexandra Fresch" "@afresch"	Guelph, ON	N/A
"mugoya mahd" "@mugmahd"	Dubai, United Arab Emirates	In response to his tweet that he donated to JSP's recount fund, another user tweeted to him "that's against American law isn't it?"
"ryc" "@lightboxgallery"	Toroncouver	N/A
"Stacie Hood" "@staciehood"	Cayman Islands	N/A
"eliza moore" "@elizamoore"	Montreal	N/A
"Amanda Mesaikos" "@amandamesaikos"	London	N/A
"Ibracadabra" "@IBRAdrago"	Mexico	N/A
"Rachel Linn" "@rachellinn"	London	Twitter biography indicates she is in "London via Cambridge via California."

[1] As displayed on subject Twitter profile.

[2] IMDb.com is a website that provides biographical information for individuals in the film/television industry. Khanh Trieu appears to work as an actor.

Twitter Profile Name and Handle	Location	Additional Relevant Information
"Benny Kaufman" "@Benny_Kaufman"	Democratic Republic of Congo	N/A
"yankinyoukay" "@yankinyoukay"	London, England	N/A
"Carl Robinson" "@_carlrobinson"	Paris, France	Current Twitter profile provides a link to his LinkedIn profile page, which indicates that all of his work and educational experience, dating back to 1998, took place either in the United Kingdom, France, or China; Robinson's work history includes founding a language school in Beijing in which "[a]ll our teachers were native speakers from the United Kingdom."
"Thomas Lienart" "@thewildcat22"	N/A	The Exhibit includes a screenshot from the webpage of the web design agency that he works for, which is written in French.
"Jason the Earthquake" "@nowasforjason"	Morlya, Japan	N/A
"Jo" "@deepestbluesea"	London	N/A
"Colby Benari" "@cbenari"	London, England	Her tweet that she donated to JSP's recount fund is specifically directed to U.S. citizens. In response to her tweet that she donated to JSP's recount fund, another user tweeted to her "Thanks! You just made it even easier to send @DrJillStein to prison for violating @FEC election laws on accepting foreign $!"
"Shabbir Hussain" "@networkerspro"	Karachi	In response to his tweet that he donated to JSP's recount fund, multiple individuals tweeted to him and suggested that he was not a U.S. citizen. The Exhibit also includes a link to his Facebook page, which says that his current city and hometown are both in Pakistan.
"Aileen Payumo" "@aileenpayumo"	Manila, Philippines	Twitter biography describes her as a "[r]epatriate of the Philippines."
"Thomas C. King" "@Thomas_C_King"	Lancaster, England	The Exhibit includes a printout of his personal webpage, which indicates he is a researcher at Lancaster University.
"Lynn Morrison" "@NomadMomDiary"	Oxford, UK	The Exhibit includes a printout of her personal webpage, which describes her as a "smart-ass American raising two prim princesses with her obnoxiously skinny Italian husband in Oxford, England."
"Sean Lim" "@theseoulite"	N/A	In response to his tweet that he donated to JSP's recount fund, another user tweeted to him "[w]hy is Korea donating $ to #recount2016! More foreign funds!" In response, Lim tweets "don't be a troll gigi. I am an overseas U.S. voter. Are you a Russian

Twitter Profile Name and Handle	Location	Additional Relevant Information
		operative? @CIA plz investigate."
"Tom Torsney-Weir" "@gabysbrain"	Vienna, Austria	Twitter biography states that he studies at the University of Vienna.
"HB" "@heidicando"	Canada	In response to his tweet that he donated to JSP's recount fund, another user tweeted to him "[i]f you are for #ElectionIntegrity are you also for ensuring that only #American citizens eligible to vote can do so? #VoterID." In response, he tweeted "of course!"
"[Twitter profile name not in English letters]" "@symptia"	Casablanca	The Exhibit includes a screenshot of her Linkedin profile, which references several foreign institutions.
"Ray of Chinarabia" "@RayofChinarabia"	N/A	A snapshot of his website, which appears to focus on China, is included with the Exhibit. That website describes him with the following: "[l]ong story short, raised in America from the Midwest to the West Coast on a starchy diet of movies and comics and science fiction paperbacks. There's a Mid-East connection in there too . . . Lived in Shenzhen, China, since 2008. . . ."
"Roxana Mullaf" "@roxmilz"	Jordan	N/A
"Davida Chazan" "@ChocolateLady57"	Jerusalem, Israel	The Exhibit provides a screenshot from her book review website, which states that she is originally from Evanston, Illinois, and moved to Israel at the age of 21.
"Michelle Medeiros" "@Tapaut"	Amsterdam	N/A
"Star624" "@Star624"	South East, England	N/A
"Jillian Schedneck" "@JSchedneck"	Adelaide, South Australia	The Exhibit provides a screenshot from her travel website, which references time spent both in the U.S. and overseas.
"Lowsy" "@Nazgullow"	New Zealand	N/A
"Alyssa Bradac" "@ADBradac"	Calgary, Canada	N/A
"Stacey DeAmicis" "@ukadventuregurl"	Plymouth, UK	N/A
"viviana narotzky" "@vnarotzky"	Mostly Europe	The Exhibit includes a screenshot of her Linkedin profile, which references work with foreign institutions.

Twitter Profile Name and Handle	Location	Additional Relevant Information
"Chris Brody" "@cbrody"	London	The Exhibit includes a screenshot to his website, which indicates that he runs a South-London based IT consultancy.
"Gabriela Sosa" "@gabrielasosa"	Vancouver, B.C., Canada	N/A
"Natasha M Drissi" "@yakusoku"	N/A	Twitter profile indicates she is a PhD student at the University of Linkoping in Sweden.
"Ann Aguirre" "@MsAnnAguirre"	Sayavedra, Mexico	N/A
"Jesse Pinho" "@jessepinho"	Berlin, Germany	N/A

R Edits July 27, 2018

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jill Stein for President and Steven Welzer in his official capacity as treasurer

MUR 7205

I. INTRODUCTION

The Complaint alleges that Jill Stein for President ("JSP") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by accepting foreign national donations in connection with its recount efforts following the 2016 presidential election.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Jill Stein was the Green Party's candidate for President of the United States during the 2016 general election.[1] After the election, Stein announced her intention to challenge the presidential election results in Wisconsin, Michigan, and Pennsylvania.[2] JSP subsequently began raising money to effectuate the recounts, and ultimately raised more than $7,000,000 for the recount effort.[3] JSP filed a recount petition with the Wisconsin Election Commission, and a recount was conducted in that state.[4]

[1] *See* FEC Form 2, Statement of Candidacy, Jill Stein (July 9, 2015).

[2] *See* Compl. at 5; *see also Greens Demand Recounts in Wisconsin, Michigan, and Pennsylvania,* http://www.jill2016.com/greens_demand_recounts (last visited Feb. 27, 2018) ("*Greens Demand Recounts,* www.jill2016.com").

[3] *See* 2016 Year-End Report, Jill Stein for President (Feb. 1, 2017); *see also Greens Demand Recounts,* www.jill2016.com ("We need your help to make sure your votes were counted accurately on Election Day. Please donate now to help maintain integrity in our elections. This effort to ensure election integrity is in your hands! In true grassroots fashion, we're turning to you, the people, and not big-money corporate donors to make this happen.")

[4] *See Jill Stein Files Recount Petition in Wisconsin* (Nov. 25, 2016), http://www.jill2016.com/recountfilingwi. JSP disclosed a $3,499,689 recount filing fee paid to Wisconsin on November 29, 2016. *See* 2016 Year-End Report at 298, Jill Stein for President.

The Complaint alleges that an unknown number of donors to JSP's recount fund were foreign nationals.[5] In support, the Complaint notes that the JSP website permitted donors to announce their donation through various social media platforms, including Twitter, and asserts that several Twitter users who announced their donations appear to not be U.S. citizens.[6] The Complaint provides a 116-page exhibit (the "Exhibit") consisting of screenshots of tweets from 45 Twitter users who apparently donated to the recount effort.[7] Each tweet states "I just donated to #Recount2016 and to help ensure election integrity. Join me."[8] Most of the 45 Twitter users included in the Exhibit entered a foreign location in the optional "Location" field in their Twitter profiles, which the Complaint cites as evidence that the apparent donors may be foreign nationals.[9] The Exhibit also includes, for some of the 45 Twitter users, screenshots and printouts of other tweets or other websites linked from their Twitter profiles that show purported foreign activity or residence in support of the allegation that they may not be U.S. citizens.[10] The Complaint acknowledges that some of the Twitter users included in the Exhibit might be U.S. citizens, but also notes that not all donors may have used JSP's web tool to announce their donations on Twitter.[11]

5 Compl. at 5-7.

6 *Id.*

7 *Id.*, Ex. A. The Office of General Counsel has compiled an attachment to this report that summarizes the most relevant information from the Exhibit. *See* Attach. 1.

8 *See, e.g.*, Compl. at 13, 16, & 18.

9 *Id.*; *see also* Attach. 1.

10 Compl., Ex. A.

11 *Id.* at 5-7.

A review of the archived version of JSP's website shows that its donation page did not mention the prohibition on foreign national contributions.[12] JSP's current donation page requires certain identifying information, such as address, from all contributors.[13]

JSP did not respond to the Complaint.

B. Legal Analysis

The Act and Commission regulations prohibit a foreign national from making a contribution or donation, directly or indirectly, in connection with a federal, state, or local election.[14] A "foreign national" includes an individual who is not a citizen of the United States or a national of the United States and who is not lawfully admitted for permanent residence.[15] The Act further prohibits persons from soliciting, accepting, or receiving a contribution or donation from a foreign national.[16] The foreign national prohibition applies to funds that are raised in connection with a recount.[17]

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12 *See Jill 2016 (Donate)*, https://web.archive.org/web/20170717144019/https://jillstein nationbuilder.com/donate (archived version from Nov. 22, 2016).

13 *See Jill 2016 (Donate)*, https://www.jill2016.com/donate (last visited Mar. 1, 2018). It does not appear that the archived version of this section of the page is available.

14 52 U.S.C. § 30121(a)(1)(A); 11 C.F.R. § 110.20(b).

15 52 U.S.C. § 30121(b)(2). The term "foreign national" also includes "a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country." 52 U.S.C. § 30121(b)(1); 22 U.S.C. § 611(b).

16 52 U.S.C. § 30121(a)(2). The Commission's regulations employ a "knowingly" standard here. 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited foreign national contribution or donation if that person has actual knowledge that funds originated from a foreign national, is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds originated from a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the funds originated from a foreign national but failed to conduct a reasonable inquiry. 11 C.F.R. § 110.20(a)(4).

17 *See* 11 C.F.R. §§ 100.91, 100.151 (exempting funds raised during a recount from the definitions of "contribution" and "expenditure," respectively, but noting that 11 C.F.R. § 110.20, the foreign national prohibition, shall apply); Advisory Op. 2006-24 (NRSC & DSCC) at 5.

The Complaint, in support of its allegation that JSP accepted foreign national donations, provided various screenshots of Twitter profiles and tweets for individuals who claimed to have donated to JSP for the recount.[18] Most of the profiles appear to indicate that the user is located outside the United States.[19] At least one of the profiles of a purported JSP donor expressly states that the user is not a United States citizen: the Twitter biography for user @MaxWrite states that Max is Canadian.[20] Information concerning a few of the other purported donors suggests that they are foreign nationals, while some of the apparent donors included in the Exhibit are U.S. citizens.

JSP's disclosure reports do not show any itemized donations or contributions from any of the names that are discernible from the Twitter profiles included in the Exhibit. Thus, while the available information provides a reasonable inference that a small number of the 45 Twitter users are foreign nationals, while also providing an inference that others are United States citizens, the only information suggesting that the users donated to the recount fund are the user's tweets. Further, the Complaint's allegations of foreign national interference do not contemplate safeguards JSP may have implemented to identify potential foreign national contributions. Though we do not know what, if any, specific safeguards JSP may have had in place, it appears that JSP's current donation page requests identifying information, including address, from contributors, which would have allowed JSP to identify potential foreign national donations.

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18 Compl., Ex. A.

19 *Id.*; *see also* Attach. 1.

20 Compl. at 12.

The information shows that only a small number of the identified Twitter users may be foreign nationals and JSP's disclosure reports do not show donations or contributions from the names that are discernible from the Twitter profiles, suggesting that any donations may have been below the $200 itemization threshold.[21] Thus is appears that if any of these individuals were foreign nationals and they actually donated to the recount fund, those donations were likely *de minimis*. In light of these circumstances, the Commission does not believe that an investigation of the Complaint's allegations would be a prudent use of the Commission's limited resources.

Accordingly, the Commission exercises its prosecutorial discretion and dismisses the allegation that Jill Stein for President and Steven Welzer in his official capacity as treasurer violated 52 U.S.C. § 30121(b)(2) and close the file in this matter.[22]

[21] *See* 52 U.S.C. § 30104(b)(3)(A).

[22] *See Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

Exhibit J

FEDERAL ELECTION COMMISSION

INSTRUCTIONS FOR PREPARING FEC FORM 5
(Report of Independent Expenditures Made and Contributions Received to be Used by Persons Other Than Political Committees)

Who Must File

Every person, group of persons or organization, other than a political committee, that makes or contracts to make independent expenditures aggregating in excess of $250 with respect to a given election in a calendar year must report these expenditures by submitting FEC Form 5 or a signed statement satisfying the requirements of 11 CFR 109.10. (Political committees that make independent expenditures shall report them on FEC Form 3X, Schedule E.)

Note: Individuals and other persons must file this form in an electronic format under 11 CFR 104.18 if they make independent expenditures in excess of $50,000 in a calendar year, or if they have reason to expect that they will exceed this threshold during the calendar year. If you have reached this level of activity, you must file this form in an electronic format. Contact the FEC for more information on filing electronically.

Definitions

Contribution means any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of inflencing any election for federal office.

Independent expenditure means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made with the cooperation or prior consent of, in consultation with, or at the request or suggestion of, a candidate or an agent or authorized committee of a candidate or a political party committee or its agents. 11 CFR 100.16. For a definition of "expressly advocating," see 11 CFR 100.22.

Publicly Distributed or Publicly Disseminated. "Publicly distributed" means aired, broadcast, cablecast or otherwise disseminated through the facilities of a television or radio station or cable television or satellite system. 11 CFR 100.29(b)(3). "Publicly disseminated" refers to communications made public via other media (e.g., newspapers, magazines, etc.) 11 CFR 104.4(f). See also, "Interpretive Rule on When Certain Independent Expenditures are 'Publicly Disseminated' for Reporting Purposes," 76 FR 61254 (2011).

Name of Employer means the organization or person by whom an individual is employed, rather than the name of his or her supervisor. Individuals who are self employed should indicate "selfemployed."

Occupation means the principal job title or position of an individual.

Purpose means a brief statement or description of why the disbursement was made.

When to File

Each calendar year is divided into quarterly reporting periods. Reports for independent expenditures are due on April 15, July 15, October 15 and January 31 of the following year and must include all reportable contributions received and independent expenditures made from the closing date of the last report filed through the end of the calendar quarter for which the report is submitted. 11 CFR 109.10(b).

File reports of independent expenditures made during the calendar quarter reporting period in which these expenditures aggregate in excess of $250 with respect to a given election in the calendar year, and for any subsequent quarter that year in which additional independent expenditures for that election of any amount are made.

In addition to this quarterly reporting of independent expenditures, more timely reports are required for independent expenditures with respect to the same election that either: 1) aggregate $10,000 or more and are made more than 20 days before the election ("48-hour reports"); or 2) aggregate $1,000 or more and are made less than twenty days before the election ("24-hour reports"). See below.

48-Hour Reports

In addition to quarterly reports, any person that makes or contracts to make independent expenditures aggregating $10,000 or more with respect to a given election during the calendar year up to and including the 20th day before an election must report these expenditures within 48 hours. The report must be received no later than 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which an independent expenditure is publicly distributed or disseminated. The person must continue to file additional 48-hour reports every time subsequent independent expenditures reach the $10,000 threshold with respect to the same election to which the first report related. The report must include all of the information required on Form 5 and by 11 CFR 109.10(e), including a statement indicating whether the independent expenditure was in support of, or in opposition to, a particular candidate and a verified certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation or concert with, or at the request or suggestion of any candidate or authorized committee or agent or a political party committee or agents thereof. All 48-hour reports shall be filed with the Federal Election Commission. Filers other than electronic filers may submit 48-hour reports by fax (to 202-219-0174) or electronic mail (to 2022190174@fec.gov). All filers may submit reports online at www.fec.gov.

24-Hour Reports

In addition to the quarterly reports and 48-hour reports, persons who make independent expenditures aggregating $1,000 or more with respect to a given election after the twentieth day but more than 24 hours before 12:01a.m. of the day of the election must file 24-hour reports. The report must be received by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which an independent expenditure is publicly distributed or disseminated. These reports must contain all of the information required on Form 5 and by 11 CFR 109.10(e), including a statement indicating whether the independent expenditure was in support of, or in opposition to, a particular candidate and a verified certification under penalty of perjury as to whether such independent expenditure was made in cooperation, consultation or concert with, or at the request or suggestion of any candidate or authorized committee or agent or a political party committee or its agents. All 24-hour reports shall be filed with the Federal Election Commission. Filers other than electronic filers may submit 24-hour reports by fax (to 202-219-0174) or electronic mail (to 2022190174@fec.gov). All filers may submit reports online at www.fec.gov.

Special election reporting

The Commission establishes separate reporting schedules for special elections. Contact the Commission for special election reporting dates.

Where To File

File all reports using this Form with the Federal Election Commission, 1050 First Street, N.E., Washington, DC 20463. Filers other than electronic filers may submit reports by fax (to 202-219-0174) or electronic mail (to 2022190174@ fec.gov). All filers may submit reports online at www.fec.gov.

For reports of independent expenditures supporting or opposing a candidate in Guam, Northern Mariana Islands or Puerto Rico for the House, submit a copy of this form to the territory in which the candidate seeks election. For reports of independent expenditures made in Guam, Northern Mariana Islands or Puerto Rico supporting or opposing a candidate for President or Vice President, submit a copy of this form to the territory in which the expenditure is made. As of August 2013, these territories had not qualified for the Commission's state filing waiver program.

Record retention. Persons filing independent expenditure reports must retain copies of their reports for a period of not less than 3 years from the date of filing.

Line By Line Instructions

LINE 1. Name of Individual, Organization or Corporation. Provide the name and mailing address of the filer.

LINE 2. Individual filers—provide the name of your employer and your occupation.

LINE 3. FEC Identification Number. First time filers—leave this line blank. Previous filers with an identification number—enter that number.

LINE 4. Type of Report. (a). Indicate the type of report being filed by checking the appropriate box. For "48-Hour" and "24-Hour" reports, check the box "48-Hour Report" or "24-Hour Report" as applicable.

(b). Indicate if the report is an amendment and, if so, what report it amends.

LINE 5. Covering Period. For quarterly reports, enter the report coverage dates. Include all activity from the ending coverage date of the last report filed or from the date of the filer's initial receipt or disbursement, as appropriate. When submitting multiple forms for a single period, indicate the current page number and total pages submitted for the period. Coverage dates are not required on 24- and 48-hour reports. Filers that nevertheless choose to enter a covering period may use the first and last dates on which the communication airs. For communications that are paid entirely in advance and run indefinitely, the filer may enter the date on which the communication first airs through the date of the applicable election. Additional 24- or 48-hour reports are required each time subsequent independent expenditures reach the applicable $1,000 or $10,000 threshold.

LINE 6. Total Contributions. Enter total contributions received during the reporting period, including contributions of $200 or less that were not itemized on Schedule 5-A. When submitting multiple forms for a single period, enter total on page 1.

LINE 7. Total Independent Expenditures. Enter the total amount of independent expenditures made during this reporting period. When submitting multiple forms for a single period, enter total on page 1.

Verification

FEC FORM 5 must be signed by the person making the independent expenditure, who must certify verifiably under penalty of perjury that the expenditure was not made in cooperation, consultation or concert with, or at the request or suggestion of any candidate or authorized committee or agent or a political party committee or its agents. 11 CFR 109.10(e)(1)(v) and (2). Electronic filers: Type the name of the person making the independent expenditure after the certification.

Instructions for Schedule 5-A (Itemized Receipts)

Provide the requested information for each contribution over $200 that was made for the purpose of furthering the independent expenditures.

Instructions for Schedule 5-E (Itemized Independent Expenditures)

Once the total of independent expenditures made exceeds $250 per election in a calendar year, provide the requested information about the payee, the date the independent expenditure was made and the amount. For purposes of determining whether 24- and 48-hour Reports must be filed, calculate the aggregated amount of expenditures (including enforceable contracts obligating funds for disbursement) as of the first date on which a communica-

tion which constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated, and as of the date that any such communication with respect to the same election is subsequently publicly distributed or otherwise publicly disseminated. 11 CFR 104.4(f). See also, "Interpretive Rule on When Certain Independent Expenditures are 'Publicly Disseminated' for Reporting Purposes," 76 FR 61254 (2011).

Indicate under "Purpose of Expenditure," the specific type of communication made (e.g., television ad, radio ad). Along with reporting the purpose of the expenditure, filers should also broadly characterize each disbursement by providing a category/type code, such as the example listed below. Note that the category/type code is not intended to replace or to serve as a substitute for the "purpose of disbursement."

004 Advertising Expenses -including general public political advertising (e.g., purchases of radio/television broadcast/cable time, print advertisements and related production costs)

Identify the candidate supported or opposed by the independent expenditure by indicating the candidate's name, office sought and the election for which the disbursement was made. Also, list the total amount expended in the aggregate during the calendar year, per election, per office sought.

Subtotal the expenditures at the bottom of Schedule 5-E and add them to the subtotal of unitemized independent expenditures at the bottom of the last Schedule 5-E page. Carry the total forward to Line 7 of Form 5.

Exhibit K

Office of the Inspector General
U.S. Department of Justice

Audit of the National Security Division's Enforcement and Administration of the Foreign Agents Registration Act

Audit Division 16-24 September 2016

AUDIT OF THE NATIONAL SECURITY DIVISION'S ENFORCEMENT AND ADMINISTRATION OF THE FOREIGN AGENTS REGISTRATION ACT

EXECUTIVE SUMMARY

The Foreign Agents Registration Act of 1938 (FARA), 22 U.S.C § 611 *et seq*., as amended, is a disclosure statute that requires persons acting as agents of foreign principals in a political or quasi-political capacity to make periodic public disclosure of their relationship with the foreign principal, as well as activities, receipts, and disbursements in support of those activities. According to the Department of Justice (Department), this disclosure facilitates evaluation by the government and the American people of the statements and activities of such persons in light of their function as foreign agents. The FARA Registration Unit (FARA Unit) of the Counterintelligence and Export Control Section (CES) within the Department's National Security Division (NSD) is responsible for the administration and enforcement of the Act. A willful failure to register as an agent of a foreign principal may result in criminal prosecution and a sentence of a fine and up to 5 years in prison. There also is a civil enforcement provision that permits the Department to seek to enjoin a party from acting as an agent of a foreign principal in violation of FARA.

This review was initiated in response to a requirement by the U.S. House of Representatives Committee on Appropriations that the OIG review the Department's enforcement of FARA. Based on this direction, our audit objectives were to review and evaluate the monitoring and enforcement actions taken by the Department to ensure appropriate registration, and to identify areas for the Department to consider seeking legislative or administrative improvements.

During our audit, we found that the number of active FARA registrations peaked in the 1980s, with a high of 916 active registrations in 1987, and began to fall sharply in the mid-1990s. The Department has not performed an analysis on the decline, but NSD officials speculated that the imposition of FARA registration fees in 1993 and the passage of the Lobbying Disclosure Act (LDA), which carved out a significant exemption to FARA in 1995, were likely factors. In addition to the declining trend in registrations, we also found that there historically have been very few FARA prosecutions. Between 1966 and 2015 the Department only brought seven criminal FARA cases – one resulted in a conviction at trial for conspiracy to violate FARA and other statutes, two pleaded guilty to violating FARA, two others pleaded guilty to non-FARA charges, and the remaining two cases were dismissed. We were also told by NSD that the Department has not sought civil injunctive relief under FARA since 1991.

In discussions with several Federal Bureau of Investigation (FBI) counterintelligence agents and Assistant United States Attorneys (AUSA), as well as NSD officials, we found differing understandings between field agents and prosecutors and NSD officials about the intent of FARA as well as what constitutes a

"FARA case." The primary difference stemmed from the belief of investigators that investigations conducted pursuant to a separate criminal provision, 18 U.S.C. § 951 (Section 951), were FARA cases. However, NSD officials stated that unlike FARA and the LDA, Section 951 can be aimed at political or non-political activities of agents under the control of foreign governments. Although registration under FARA can serve as the required notification to the Attorney General under Section 951, the criminal activity targeted is different. According to NSD officials, who must approve both FARA and Section 951 cases, a true FARA case can only be brought pursuant to 22 U.S.C. § 611, *et seq*., and these officials stated that NSD currently is engaged in ongoing outreach activities that will help better educate investigators about FARA. We believe these differing understandings are indicative of the lack of a comprehensive Department enforcement strategy on FARA, which the Department should develop and integrate with its overall national security efforts.

Further, the majority of those agents interviewed believed that NSD's review of what they believed to be FARA cases was generally slow and that NSD is reluctant to approve these charges. Some investigators believed that NSD has a clear preference toward pursuing registration for alleged FARA violators rather than seeking prosecution, which in their opinion, leaves an important counterintelligence tool underutilized. NSD officials told us that they believed that even though criminal penalties are available under FARA, the primary goal of FARA is in fact to ensure appropriate registration and public disclosure. These NSD officials also disputed that there is any reluctance on their part to approve either true FARA or Section 951 cases, and stated that they approve charges when the evidence presented leads them to judge that a provable willful violation exists.

Timely submission of required documentation is essential for full and complete public disclosure. However, we found in our testing that 62 percent of initial registrations were untimely, and that 50 percent of registrants filed at least one supplemental statement late. We also found that NSD needs to improve its controls and oversight of FARA registrations, particularly involving its inspections of registered foreign agents and enforcing the complete and timely submission of required documentation. Agents of foreign principals are required to maintain records of activities on behalf of their principal for the duration of the agreement and 3 years thereafter. These records are subject to inspection by the NSD's FARA Unit. If an inspection identifies deficiencies in an agent's disclosures, the FARA Unit advises the registrant of the deficiencies and actions required for resolution. We noted, however, that several inspection recommendations issued by the FARA unit still remained unresolved and believe that NSD can further improve its monitoring efforts by developing a policy to ensure appropriate resolution of recommendations identified in its inspection reports. NSD stressed to us that because the FARA Unit has limited staff and considerable responsibilities follow-up can be difficult. We understand this challenge but believe improvements can still be made.

With regard to potential legislative improvements, NSD officials stated that a major difficulty is a lack of authority to compel the production of information from persons who may be agents. As a result, NSD is currently pursuing civil investigative demand (CID) authority from Congress in order to enhance its ability

to assess the need for potential agents to register. While we concur that CID could be a useful tool for NSD, there are important competing considerations at stake, and we believe that any expansion of such authority must also include appropriate controls and oversight to ensure it is used appropriately. Another difficulty NSD cited relates to the breadth and scope of existing exemptions to the FARA registration requirement and determining whether activities performed by certain groups, such as think tanks, non-governmental organizations, university and college campus groups, foreign media entities, and grassroots organizations that may receive funding and direction from foreign governments fall within or outside those exemptions. According to the FARA Unit, these types of organizations generally claim that they act independently of foreign control or are not serving a foreign interest and are not required to register.

NSD officials also told us that the enactment of the LDA in 1995 may have contributed to the recent decline in FARA registrations. The LDA focuses on those engaged in lobbying activities on behalf of domestic and foreign interests and those agents of foreign principals who engage in lobbying activities and who register under the LDA, and, as a result, are exempt from registration under FARA. However, NSD believes that because FARA disclosure requirements are more rigorous than those of the LDA, those lobbying on behalf of foreign commercial interests should not be exempt from FARA registration. We believe that the development of an enforcement strategy for FARA cases should include an assessment of the LDA exemption and its impact to determine if legislative changes should be sought.

In this report we make 14 recommendations to help improve NSD's enforcement and administration of FARA. We found that several of these recommendations were similar to those made over the years in reports by the Government Accountability Office, and its predecessor the General Accounting Office, and by public interest organizations, and that these recommendations should be seriously considered if the purposes of FARA are to be fully realized.

AUDIT OF THE NATIONAL SECURITY DIVISION'S ENFORCEMENT AND ADMINISTRATION OF THE FOREIGN AGENTS REGISTRATION ACT

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AUDIT OF THE NATIONAL SECURITY DIVISION'S ENFORCEMENT AND ADMINISTRATION OF THE FOREIGN AGENTS REGISTRATION ACT

INTRODUCTION

The Foreign Agents Registration Act (FARA) of 1938, as amended, requires persons acting as agents of foreign principals in a political or quasi-political capacity to make periodic public disclosure of their relationship with the foreign principal, as well as their activities, receipts and disbursements in support of those activities.[1] According to the Department of Justice (Department or DOJ), such disclosure enables the American people to evaluate the statements and activities of such persons in light of their function as foreign agents.

Individuals or entities may act as agents or employees of foreign governments or interests on a variety of matters, including for instance lobbying a member or committee within Congress. FARA requires an agent, upon entering into an agreement with a foreign principal, to submit an initial registration to the Department. This registration must describe the agent registering, the foreign principal, the nature of work to be performed, and include a copy of the agreement between the agent and the associated foreign principal. These registrations must be filed within 10 days of an agreement to become an agent of a foreign principal, and the foreign agent must pay a filing fee of $305.[2]

Every 6 months after the initial filing, the agent is required to submit a supplemental statement to the FARA Unit describing activities performed during that period and the amounts paid for that work. Each supplemental statement also requires the agent to pay an additional $305 fee for each foreign principal represented during the period.

The agent also is required to submit to the FARA Unit any informational materials produced on behalf of the principal and transmitted to two or more persons within 48 hours of transmittal. These informational materials must contain a conspicuous statement that the materials were distributed by an agent on behalf of a foreign principal, and that further information is on file with DOJ.

As discussed in detail below, there are multiple exemptions to FARA registration requirements, including persons whose activities are of a purely commercial nature or solely of a religious, scholastic, academic, scientific or fine arts nature, as well as attorneys engaged in legal representation of foreign principals so long as they do not try to influence policy at the behest of their client. In addition, any agent who is engaged in lobbying activities and is registered under

[1] 22 U.S.C. § 611, *et seq*.

[2] Specific requirements for the registration and its submission are contained in a regulation promulgated by the Department, 28 C.F.R. § 5.1, *et seq*.

the Lobbying Disclosure Act (LDA) is exempt from registration under FARA if the representation is on behalf of a foreign commercial interest rather than a foreign government or foreign political party.[3] As we discuss later in the report, there are different requirements for registrants under the LDA that may impact the Department's efforts under FARA. LDA is administered by Congress rather than the Department. FARA Unit staff told us they review LDA filings, typically once a month, looking for potential FARA registrants. The unit looks for direction, control, and tasking from a foreign government. When a potential FARA obligation is found, the unit sends the potential registrant a letter of inquiry.

History of FARA

FARA was enacted in 1938 in response to recommendations of a special congressional committee investigating anti-American activities in the United States. The committee studied the rise of propaganda activity by European fascist and communist governments to determine whether the United States needed a new means to protect its citizens from political propaganda from foreign sources. A significant finding of the committee's study was that the Nazi German government had established an extensive underground propaganda apparatus using American firms and citizens.

From its passage in 1938 until amendments made in 1966, FARA primarily focused on propagandists. The 1966 amendments, which still form the core of the current Act, shifted its focus to protecting the integrity of the government's decision-making process and to the identity of the sources of political propaganda. The 1966 amendments also narrowed the reach of FARA so that the government has to prove that a foreign agent is acting at the order, request, or under the direction and control of a foreign principal. The amendments led DOJ to allow persons who believe they may be subject to FARA requirements, or their attorneys, to request an advisory opinion from the Department regarding their obligation to register.[4] According to FARA Unit staff, the 1966 amendments reduced the incidence of criminal FARA prosecutions in favor of increased civil and administrative resolution of FARA violations.

The next significant legislative change affecting FARA resulted from the 1995 passage of the LDA. Under the LDA, any agent who is engaged in lobbying activities and is registered under the LDA is exempt from FARA registration if the representation is on behalf of a foreign commercial interest rather than a foreign government or foreign political party. The term "political propaganda" was also removed from FARA and replaced with the term "informational materials," which is not defined. According to FARA Unit staff, Congress believed the term "propaganda" to be an unnecessary remnant of the original law and believed the

[3] 2 U.S.C § 613(h).

[4] 28 C.F.R. § 5.2

change to "informational materials" reflected the shift in focus to the public disclosure of agents engaged in the U.S. political process.

NSD's Administration and Enforcement of FARA

The National Security Division's (NSD) Counterintelligence and Export Control Section (CES), and its FARA Registration Unit are primarily responsible for the enforcement and administration of FARA. CES and the FARA Unit have been part of NSD since the Division's creation in 2006. Prior to 2006, CES and the FARA Unit were part of the Department's Criminal Division. The NSD maintains a publicly available page on the Department's website at www.fara.gov, which contains information on the statute and filing requirements and contact information for the FARA Unit. The fara.gov webpage also contains an e-filing capability for registrations, a document search page that allows for public access to initial and supplemental registration statements and their Exhibits, and the semiannual reports from the Department to Congress that are required by the Act and list registered agents of foreign interests and their activities. FARA cases are primarily investigated by Federal Bureau of Investigation (FBI) counterintelligence agents and prosecuted by United States Attorney's Offices (USAO) after receiving NSD approval as required by Section 9-90.710 of the United States Attorneys' Manual. A willful violation of FARA, including false statements or omission of material facts, carries a penalty of a fine or imprisonment for up to 5 years, or both.

During our audit the FARA Unit was comprised of one Unit Chief, who is also an attorney; two staff attorneys; one Supervisory Program Manager; one Intelligence Research Specialist; one Program Specialist; and two Case Management Specialists.[5] NSD staff emphasized that this is a limited staff, which is responsible for a considerable range of activities. The unit is responsible for processing and monitoring new and existing FARA registrations on an ongoing basis. This includes receiving, reviewing and processing documentation and payments, and addressing late or inaccurate submissions. The unit also performs periodic formal inspections to assess the adequacy of registrant reporting and disclosure, and conducts open source searches to identify individuals that may be obligated to register. It also provides, upon request, advisory opinions to individuals who are unsure whether FARA registration is required of them and maintains foreign agent submissions in electronic and hard copy form for public consumption. The unit has received 14 requests for advisory opinions since the beginning of 2013. We inquired whether advisory opinions were made publicly available as an informational resource. Unit staff responded that advisory opinions are not made public, adding that each request is unique, opinions rely on the information provided by the requestor, and that advisory requests involve proposed activity. However we note that the Office of the Inspector General (OIG) posts investigative findings on its public website, and that the DOJ Criminal Division posts

[5] One of these two staff attorneys joined the FARA Unit during our audit. At the conclusion of our audit we were informed that the FARA Unit was back to one staff attorney, however the unit planned to hire a replacement.

Foreign Corrupt Practices Act opinions as well, both in anonymized form.[6] We believe the FARA advisory opinions may be a worthwhile informational resource, and recommend NSD consider whether there is value in making them publicly available. The FARA Unit also assists CES, FBI and USAOs with FARA-related investigations as needed.

The FARA Unit Chief reports to the Section Chief of CES. As noted above, the U.S. Attorneys' Manual requires NSD approval before a USAO can charge a FARA violation. CES reviews and approves or declines FARA charges in consultation with the FARA Unit.

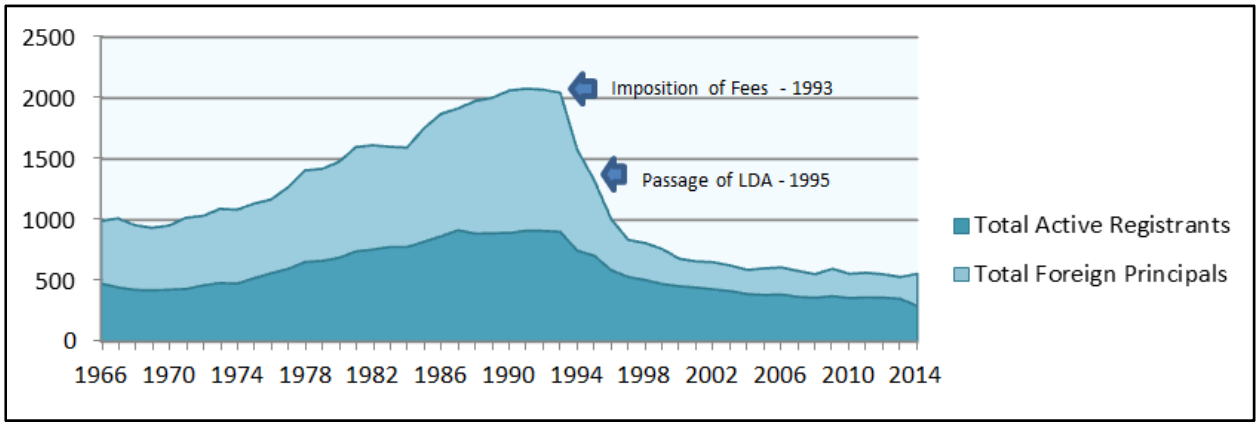
[6] See https://oig.justice.gov/reports/inv-findings.htm and https://www.justice.gov/criminal-fraud/opinion-procedure-releases.

FARA Registration Trends

We compiled data on foreign agent registrations under FARA from 1966 to the present. The following charts show the number of annual active and new registered agents and foreign principals as of the end of each calendar year.

Figure 1

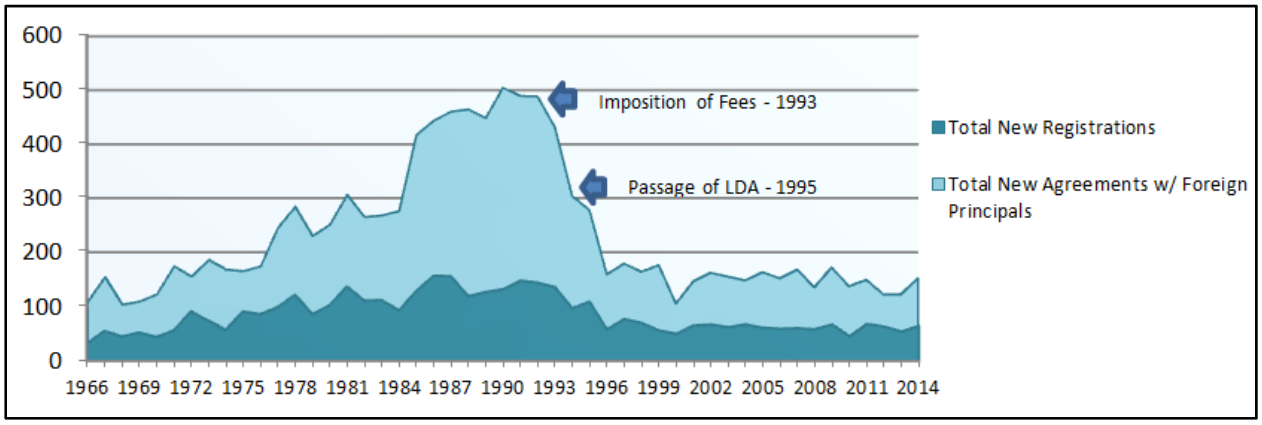
Active Registrants and Foreign Principals per Year



Source: www.fara.gov

Figure 2

New Registrant and Foreign Principals per Year



Source: www.fara.gov

As reflected in Figures 1 and 2 above, the number of active registrations for foreign agents under FARA peaked at 916 in 1987. However, in the mid-1990s active FARA registrations began falling sharply after the imposition of fees in 1993 and the passage of the LDA in 1995, leaving a total of 360 as of the end of 2014. Consequently, the number of active foreign principals also fell sharply in the mid-1990s from a high of 2079 in 1991, and was at 561 as of the end of 2014. New registrations have followed a similar trend, peaking at 157 in 1986 to a total of 66 new registrations in 2014. Since the abrupt decline in the mid-1990s, registrations have continued to trend down, albeit at a more gradual pace.

While no formal analysis on the decline has been performed by the Department, FARA Unit staff speculated that the imposition of FARA registration fees in 1993 and the passage of the LDA in 1995 were likely factors. While the OIG does not dispute that these factors played some role in declining number of FARA registrations, we could not definitively correlate specific causation for the declining trend.[7]

OIG Audit Approach

The Department of Justice Office of the Inspector General (OIG) initiated this audit at the request of the U.S. House of Representatives Committee on Appropriations, which required the OIG to review the Department's enforcement of FARA. The Committee requirement specifically directed the OIG to review the Department's enforcement of FARA, specifying:

> The report should take into account FARA filing trends and foreign government tactics to engage in public advocacy in the United States while avoiding FARA registration. The report shall recommend administrative or legislative options for the improvement of FARA enforcement.[8]

Based on this request, the objectives of our audit were to review and evaluate the monitoring and enforcement actions taken by the Department to ensure appropriate registration, and to identify areas for the Department to consider seeking legislative or administrative improvements.

We also inquired about tactics to avoid FARA registration and learned from the Assistant United States Attorneys (AUSA) and FBI case agents with whom we spoke that the impetus for FARA avoidance often appears to come not from the foreign principal, but from the agent, who is conscious of the need to preserve credibility by concealing the support of the foreign principal. FBI staff told us the foreign principal typically is indifferent to FARA requirements. The FARA Unit disagreed with the FBI staff assessment and told us that in its experience foreign principals are not indifferent to FARA requirements.

To accomplish our objectives, we interviewed staff from the National Security Division, including its Counterintelligence and Export Control Section and its FARA Unit. We also interviewed AUSAs and FBI counterintelligence agents from district and field offices involved with FARA investigations. We also spoke with staff from the FBI's Counterintelligence Division and National Security Law Branch, and with staff from the Department of Justice's Office of Legislative Affairs. Lastly, we

[7] Direct staff knowledge of the FARA Unit's history extends back to 1984. The Unit Chief has been with the FARA Unit since that time.

[8] House Report 113-448- Commerce, Justice, Science, and Related Agencies Appropriations Bill, 2015.

reviewed FARA registered agent documentation and FARA Unit records and communications.

The results of our audit are detailed in the Findings and Recommendations section of this report. Appendix 1 contains more information about our objectives, scope, and methodology, and Appendix 2 provides information on prior reports conducted by both government and private organizations that have reviewed the Department's administration and enforcement of FARA.

Prior Reports

Our research identified three prior reports prepared by the General Accounting Office (now known as the Government Accountability Office) that dealt with the administration and enforcement of the Foreign Agents Registration Act.[9] Although these reports date back to 1974, 1980, and 1990, they identified some of the same issues identified in this report, including timeliness and the use of available enforcement tools. We believe that these recommendations should be seriously considered if the purposes of FARA are to be fully realized. Additional details on these reports, as well as more recent reports produced by public interest organizations, can be found in Appendix 2.

[9] There also was a 2008 GAO report that referenced certain FARA authorities as discussed below.

FINDINGS AND RECOMMENDATIONS

We found that field level agents and prosecutors expressed frustration as they attempted to develop FARA investigations due to the perception that NSD, which must concur before charges can proceed, is reluctant to approve FARA charges. NSD officials denied that they are reluctant to approve FARA charges and told us that in the few instances where FARA charges were proposed but not pursued it was due to insufficient evidence of willful conduct necessary to bring a FARA case. Nevertheless, NSD officials acknowledged that communication about why cases might not be approved can be improved. NSD officials also acknowledged that even though criminal penalties are available under FARA, it primarily views FARA as disclosure statute, and this could also be communicated better to field agents and prosecutors. We believe this is indicative of the lack of a comprehensive FARA enforcement strategy, which the Department should develop and integrate with its overall national security efforts. In addition, we found that FARA registrants often submitted required documentation late, and were not always responsive to FARA Unit requests and recommendations to update information and correct deficiencies. We also learned about several proposals developed by NSD for legislative improvements to FARA that could improve its enforcement efforts if enacted.

Efforts to Enforce FARA

During our audit we found that historically there have been hardly any FARA prosecutions. Over the past 50 years, between 1966 and 2015, the Department reported to us that it brought, in total, only seven criminal FARA cases – one resulted in a conviction at trial for conspiracy to violate FARA and other statutes, two pleaded guilty to violating FARA, two others pleaded guilty to non-FARA charges, and the remaining two cases were dismissed.[10] Another was approved for prosecution by NSD in November 2015.[11] We also found that the NSD does not track the number of FARA cases declined for prosecution, or the reasons for such declinations. Therefore, the OIG cannot determine quantitatively whether foreign governments employ any specific tactics to avoid FARA registration. We did, however, review the cases that have been filed alleging FARA violations and spoke to the FARA Unit Chief about this topic. The FARA Unit Chief noted that foreign government lobbying in the United States is not itself inappropriate or unlawful, and that foreign agents who are not otherwise exempt must register under FARA. While

[10] According to the Department, the two dismissed FARA cases resulted from a statute of limitations issue, and the resignation of the principal prosecutor handling the case, respectively.

[11] In addition to criminal penalties, FARA allows the Department to seek civil injunctive relief when it identifies a foreign agent it believes to be in violation of the statute. The last civil enforcement action by NSD occurred in 1991. As explained in further detail in this report, NSD has been reluctant to pursue civil injunctive relief since that time.

foreign governments may be creative in their attempt to influence U.S. policy and sway public opinion, if it is done in a way that does not create a statutory agency relationship on the part of the agent acting within the United States at the direction or control of the foreign government, then there is no agent of a foreign principal with an obligation under FARA.

FARA Criminal Investigations and Prosecutions

We learned that the focus of the FARA Registration Unit's enforcement efforts is encouraging voluntary compliance, rather than pursuing criminal or civil charges. Conversely, we found that FBI and USAO staff members with whom we spoke are actively pursuing FARA criminal charges. FBI staff told us they believe this to be an effective tool carrying sufficient penalties to deter foreign principals from exerting undisclosed influence, or to compel the development of cooperating sources. Although NSD officials disagreed with the assessment offered by these FBI staff members, we believe this disagreement reflects the lack of a comprehensive Department enforcement strategy, and a lack of mutual understanding and clarity in enforcement goals as discussed in greater detail below.

This was confirmed when we spoke about the process for pursuing FARA prosecutions with NSD officials, as well as FBI counterintelligence agents and AUSAs with experience investigating FARA cases. During these discussions we found differing understandings between field agents and prosecutors and NSD officials about the intent of FARA as well as what constitutes a prosecutable FARA case. Most notably, when we discussed FARA with FBI personnel, we found that they considered a "FARA case" to be a case investigated pursuant to either the FARA, 22 U.S.C. § 611, *et seq.*, *or* 18 U.S.C. § 951 (Section 951), which is the federal statute that provides criminal penalties for certain agents of foreign governments who act in the United States without first notifying the Attorney General.[12] Unlike Section 951, FARA requires agents of foreign principals engaged in legal political or quasi-political activities such as lobbying, government and public relations, tourism promotion, and foreign economic development activities in the United States to register and make detailed disclosures of their activities in the United States conducted on behalf of their foreign principals.[13]

By contrast, Section 951 was described to us by the NSD as "espionage lite" because a Section 951 case generally involves espionage-like or clandestine behavior or an otherwise provable connection to an intelligence service, or information gathering or procurement-type activity on behalf of a foreign

[12] According to NSD, notification under Section 951 may be made by registration under FARA in circumstances where the activity requiring notice is disclosed on the FARA registration form.

[13] Political activities are defined by the statute as "any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party."

government. Although FARA registration can serve as the required notification to the Attorney General under Section 951, NSD officials told us FARA and Section 951 involve different sets of elements and different types of issues. According to NSD officials, only 22 U.S.C. 611 *et seq*. constitutes a FARA case. Nevertheless, NSD officials acknowledged the differing views on what constitutes a FARA charge and are currently engaged in an ongoing effort to better educate field investigators and prosecutors on the difference. However, in reviewing the training developed by NSD we noted that it did not appear to include specifics on how FARA cases would gain approval to proceed from NSD or what is included in case reviews to give agents and prosecutors an understanding of the length of time needed for such reviews. We therefore recommend that NSD update its current training for investigators and prosecutors to include information about the time it takes and the process used by NSD to approve or deny these cases for prosecution.

We asked the FBI for data about FARA cases presented and not prosecuted, but we were told by the FBI that their case coding commingles both FARA and Section 951 cases. Therefore, we were unable to isolate cases presented under FARA alone. We believe segregating these two types of cases in the FBI's classification codes may help advance NSD's efforts to clarify the distinction for case agents, and we recommend NSD discuss the feasibility of this with the FBI.

In addition, the majority of FBI field personnel we interviewed believed that NSD's review of FARA cases was generally slow and that NSD is reluctant to approve FARA charges, although these individuals generally speculated as to why NSD might be reluctant. We found that the NSD does not track the timeliness of its handling of FARA referrals, with the general view that the matters will take as long as they take. One person from the FBI with whom we spoke told us that, as a result, what could be an extraordinarily effective tool has instead become a point of contention and frustration, and found not just a lack of support from NSD, but "negative support." Some FBI personnel we spoke with told us that CES generally appeared to lack confidence in FARA because it was too seldom used or too difficult to prosecute. Most personnel from the FBI however told us that they came away from their interactions frustrated with CES because they were not given any explanation from CES as to why what they believed to be solid evidence of a FARA violation was declined for prosecution.[14] Some of these agents noted that NSD has a clear preference toward pursuing registration for alleged FARA violators rather than seeking prosecution, in keeping with its voluntary compliance approach. FBI and USAO staff we spoke with told us that they have been asked, repeatedly in some instances, to solicit voluntary registration from targets of investigations despite the fact that it is evident to the investigators that the target has no intention of complying. NSD officials denied this and stated that the FARA Unit is unaware of any instance in which it requested the FBI or any USAO to ask the target of an ongoing criminal investigation to register.

[14] *Cf*. USAM 9-27.270(A), providing that attorneys from the government should ensure that the reasons for declinations are communicated to the investigative agency and documented in the file.

Further, FBI personnel with whom we spoke believed that FARA carries a penalty sufficient enough to serve as a deterrent to both the agent and his foreign principal or to induce the target of an investigation to become a cooperating source. These agents felt that the Department's reluctance to bring charges in FARA cases resulted in missed opportunities to deter agents of foreign principals from criminal or other misconduct or to obtain valuable cooperation. Some staff with whom we spoke expressed concern about case agent morale and discouragement toward pursuing future FARA investigations as a result of this reluctance.

We also heard frustration expressed from FBI and AUSAs with respect to the parameters of CES' approval authority. For example, in one instance, we were told that CES cited jury appeal as a factor in declining a FARA prosecution. The AUSAs and FBI staff we spoke to about this expressed doubt whether it was appropriate for CES to overrule local prosecutors, who were in a much better position to assess the jury appeal of a case in their local jurisdiction, on this basis. NSD disagreed with this view, and told us that in any circumstance where NSD has approval authority, it must reach a conclusion by assessing prosecution risk as per the U.S. Attorney's Manual to obtain and sustain a conviction. Among the matrix of factors it considers are how a case is presented, and the risk of jury nullification.

We also noted that some of the AUSAs and FBI personnel with whom we spoke recognized the value of CES' role in the process and, in particular, stated CES can provide sound judgment, experience, and expertise when evaluating FARA investigations. Some also praised the new leadership at CES for its willingness to be more candid and communicative with the FBI and the USAOs.

CES officials acknowledged to us that even though criminal penalties are available under FARA, the primary goal of FARA is in fact to ensure appropriate registration and public disclosure. These NSD officials also disputed that there is any reluctance on their part to approve FARA criminal charges (or Section 951 charges), and stated that criminal charges are approved when the evidence presented leads them to judge that a provable criminal violation has occurred. NSD also stated that criminal FARA cases are difficult to prove because prosecutors under FARA must demonstrate both willfulness on the part of the accused to avoid registration or to make a false statement or omission in their filings, and that the agent was directed and controlled by a foreign principal. Though we do not dispute these difficulties, we found that there was not a coordinated strategy on FARA enforcement at the Department and, in particular, there was no strategy addressing how FARA fits into the Department's overall national security efforts. We therefore recommend that the Department develop a comprehensive strategy for the enforcement and administration of FARA that includes the agencies that perform FARA investigations and prosecutions and integrates with the Department's overall national security efforts. We also recommend that the NSD ensure that it informs investigators and prosecutors in a timely fashion of the reasons for which FARA cases are not approved.

In addition, because NSD does not track the number of cases it receives for enforcement consideration, we recommend that it maintain information on the

number of cases submitted for review, the amount of time such review takes, and the final determination made on the case. We believe this will enable the Department to assess and improve its handling of FARA cases. In particular, trends could be determined regarding what case information has been used to move forward with prosecutions, or whether NSD is making determinations on a timely basis.

Civil Enforcement of FARA

In addition to criminal penalties, FARA allows the Department to seek civil injunctive relief when it identifies a foreign agent it believes to be in violation of the statute. In order to seek injunctive relief, the Attorney General may petition the appropriate U.S. District Court for an order temporarily or permanently disallowing the alleged foreign agent from acting as an agent of a foreign principal. This type of remedy could be sought in instances where an alleged agent failed to register or was delinquent in filing their supplemental statements. It could also be used in instances where a registered foreign agent fails to address recommendations stemming from an inspection by the FARA Unit.

When we inquired about the Department's use of injunctive relief, we were told that it has not made use of the remedy since 1991, for several reasons. First, according to FARA Unit staff, in order to pursue a petition seeking to enforce registration, the Department must have specific evidence of foreign direction and control to be successful. According to these staff members, it is rare that such evidence exists. In addition, we were told that, as a matter of practice, before the unit would seek injunctive relief that will require registration or remedying delinquent filings, it would have to have sought voluntary registration and received a direct refusal. According to the FARA Unit, they do not typically encounter such scenarios.

FARA Unit staff also told us that the unit sought authority to impose civil fines for delinquencies twice in the 1990s, without success. However, current staff added that they would be reluctant to seek civil fines at present because it would be counterproductive in that it could serve as a deterrent to disclosure to seek fines for lateness against a registrant who is otherwise in compliance with FARA, and it would add administrative costs to the unit's work.

Nevertheless, based on the widespread delinquencies we found, we believe that there may be circumstances in which an injunctive remedy or other penalty is merited. For instance, as discussed later in this report, when we reviewed FARA Unit inspection reports from 2008 to 2014, we found instances where the unit issued recommendations to the registrant requesting submission of late supplemental statements; however, the requested supplemental statements do not appear in the FARA database, and appear to remain delinquent despite the inspection and notification of the deficiencies. Although we are not questioning that NSD needs to have the ability to use its discretion when deciding whether to pursue criminal penalties or an injunctive remedy against an alleged violator of FARA, we

believe NSD should ensure that it appropriately utilizes all of the enforcement tools available to it.

Administration and Monitoring of FARA Registrations

The FARA Unit is responsible for the monitoring of new and existing FARA registrations on an ongoing basis. This includes receiving, reviewing and processing documentation and payments, and addressing late or inaccurate submissions. As of the end of calendar year 2014, the FARA Unit was responsible for a foreign agent registrant pool of 360 agents representing 561 foreign principals. We tested documentation dating back to 2013 from a judgmentally selected risk-based sample of 78 FARA registrants, representing approximately 22 percent of the total, to evaluate the effectiveness of the FARA Unit's monitoring efforts. Generally, we found that the required documents were complete. However, we also found that documents were routinely submitted late, and in some instances registrants had ceased submitting required documentation entirely. These findings are further detailed in the sections below.

Identifying Potential Registrants

The FARA Unit attempts to identify and make contact with individuals or entities that may have an obligation to register under FARA. Identification is made primarily through review of a range of publications, web sites, and LDA filings for indications of a connection between a potential agent and a foreign principal. Potential registrants may also be identified through review of existing registrant information, or through referral from other government offices or agencies, or from the public.

When a potential obligation to register is found, the unit issues a letter of inquiry to the potential registrant advising of FARA requirements, and requests additional information relevant to registration status. The FARA Unit has found that most of the recipients of such letters responded within what it has considered to be a reasonable amount of time and either register or offer what the unit finds to be sufficient explanation that FARA requirements do not apply to them. If there is no response to the letter, a seemingly false response, or another reason to believe a significant FARA offense has been committed, FARA personnel will refer the matter to the FBI.

The FARA Unit stated it has issued approximately 130 letters of inquiry over the past ten years. Thirty-eight of the recipients were found to have an obligation to register under FARA, and subsequently did so. The remaining recipients were found to either have no obligation to register, or the FARA Unit is continuing to seek additional information to make a determination.

New Registrations

Thirteen of the 78 agent files from 2013 to 2015 that we reviewed had registrations that were initiated after January 1, 2013. We considered these to be

"new" registrations for testing purposes, and they were filed as such. However, we found that only 3 of these 13 registrations, or 23 percent, were submitted within 10 days of the underlying contract's execution as required by FARA. Eight of the 13 registrations, or 62 percent, were submitted late; with the lateness ranging from 7 to 343 days. The remaining two agent files involved verbal agreements with no contract execution date provided to the FARA Unit.[15] Without the contract execution dates, which NSD does not require, we could not assess the timeliness of these two registrations.[16]

Timely submission of initial registration documentation is essential for full and complete public disclosure of foreign agents engaged in the U.S. political process on behalf of foreign principals. However, we understand that it is difficult for NSD to ensure the timely registration of a foreign agent when it has no easy independent way to know of the foreign agent's obligation to register.

Supplemental Statements

Every 6 months after their initial registration, a foreign registered agent must submit a supplemental statement describing activities performed and sums transacted during that period. We found that 34 of 78 (44 percent) foreign agents we reviewed submitted supplemental statements in a timely manner - however half, 39 of 78, did not.[17] Of these 39, 8 (10 percent of the total) had not submitted *any* supplemental statements since January 1, 2013. FARA Unit staff believed that the registered agents who ceased filing supplemental documentation likely concluded their work for the foreign principal, but either neglected to formally inform the FARA Unit of the termination or were unaware of their obligation to do so, although 28 C.F.R. 5.205 includes a requirement to notify the FARA Unit of such termination. However, the possibility remains that these registrants may still be active.

In addition to the 8 agents who had not filed at all since January 2013, we found that 4 other agents in our sample had filed previously during that period, but were more than 6 months delinquent as of the end of 2014. In total, 12 of the 78 (15 percent) of active agents we reviewed had ceased filing altogether or were over six months delinquent. For these delinquent agents, we found that the FARA Unit sent delinquency notices periodically, but the notices did not appear to be sent

[15] FARA Unit personnel told us that they typically do not seek to impose any penalties such as late fees in such instances because they would rather see a complete submission sent in late than an incomplete one sent in on time.

[16] During discussions with the FARA Unit about enhancements to its electronic filing system, we suggested adding a field requiring registrants to enter a date for verbal agreements, in order that adherence to the ten day requirement for such agreements may be assessed going forward. FARA Unit staff agreed to consider this.

[17] Five of the foreign agents we reviewed had terminated their contracts as of January 1, 2013, and were not required to submit supplemental statements during our testing period. These five contained anomalies – duplicate registrations, terminated registration with active short forms, etc., – that caused us to include them in the sample.

consistently or on a regular schedule. FARA Unit staff told us they are working on a standardized system for batching and sending delinquency notices at regular intervals. This effort was still in development at the time of our audit and we recommend that the FARA Unit ensure the system is completed and implemented.

In addition to ensuring consistency when sending delinquency notices, we recommend that NSD develop a policy and procedures that ensure that registration files are timely closed and that it fully investigates when agents cease meeting their supplemental filing obligations for an extended period of time. We believe that enhancing the sources of information available to the Unit as discussed above will facilitate such efforts.

Registration of New Contracts

Registered agents under contract with a particular foreign principal may periodically enter into additional contracts with different foreign principals. In the 78 foreign agent files we reviewed, we found a total of 86 'new business' contracts. We found that 34 of the 86 new contracts were registered timely, but 49 of the 86 (57 percent) were not.[18] Further, we found that the late contract registrations were submitted an average of 57 days past the ten day requirement specified in FARA, ranging from 4 to 251 days late, even though these agents would have been familiar with the requirements and process from prior registrations. We recommend that the FARA Unit should consider expanding the sources of information beyond those it currently uses to locate potential or delinquent foreign agents, currently limited to open source internet and LexisNexis searches.

Filing of Informational Materials

FARA does not limit the lobbying activity or the nature of the materials distributed by agents of foreign principals, but it does require that such agents file with the Department any informational materials produced on behalf of their principal, and transmitted to two or more persons, to the FARA Unit within 48 hours of the beginning of transmittal. These informational materials must contain a conspicuous statement that the materials are distributed by an agent on behalf of a foreign principal, and that further information is on file at the Department of Justice.

We tested informational materials submitted by the 78 agents of foreign principals we reviewed to determine if the documentation was submitted within the 48 hour requirement and included the required disclosure statement. We identified a total of 1,278 pieces of informational material, 780 pieces of which were submitted by one agent, and 498 of which were submitted by the other 77 agents. It appears that many of the one agent's submissions were late because they were batched and mailed monthly without apparent regard to the date and time of

[18] We could not determine the timeliness of three of the contracts because they were verbal agreements and no date of execution was provided to the FARA Unit.

transmission to the recipients, although each contained the requisite disclosure statement. As for the 498 pieces of information submitted by the other 77 agents, we found that only 457 included a date and time of transmittal to the recipients. The remaining 41 did not, which made determining timeliness for them impossible. Of the 457 pieces of informational materials with an identifiable transmittal date and time, we found that 179 (39 percent) were submitted timely within 48 hours of transmittal, but 278 (61 percent) were not. We also found that almost half or 234 of the 498 items of information materials (47 percent) did not include the required disclosure statement. We believe that these compliance rates are unacceptable, and that the FARA Unit and the Department need to either take steps to improve them to achieve the purposes of the Act or, if the Unit considers the standard unreasonable, pursue appropriate modifications. We discuss potential modifications to informational materials requirements below.

FARA Inspections of Existing Registrants

Registered foreign agents are required by FARA and its implementing regulation to maintain accounts and records of their activities on behalf of their principals and make the records available for inspection by NSD for the duration of the agreement and for 3 years thereafter. The FARA Unit conducts these formal inspections of FARA registrants and told us that it selects files to review based on multiple factors, such as deficiencies identified during the initial review, delinquent filings, suspected undisclosed activities, and information drawn from news or law enforcement sources. An inspection involves review of all the registrant's activity files, correspondence, accounting records, invoices, and receipts related to the agent's representation of the foreign principal. If the FARA Unit finds deficiencies in an agent's disclosures, it will summarize its findings and advise the registrant of the deficiencies and provide recommendations for correcting them.

We inquired about the number of inspections conducted since 2000 and found that the FARA Unit conducted a total of eight inspections from 2000 through 2007. From 2008 through 2014, the Unit completed 87 inspections, and the current target is to perform 14 inspections per year. We believe the higher rate of inspections performed since 2008 is a positive development and, having reviewed recent inspection reports and the worthwhile recommendations they have produced, we encourage the FARA Unit to continue to maximize its inspection efforts.

However, we noted during our review of the 87 inspections conducted since 2008 that insufficient follow-up was performed on several recommendations made by the FARA Unit, and that the deficiencies identified and communicated to registrants in these recommendations remained unresolved as of the time of our audit work. Specifically, we found 11 inspection reports (12.6 percent) which recommended submission of documentation such as amendments or delinquent supplemental statements; however we found the requested documentation was not posted to the FARA web site as of January 2016. We found an additional two inspection reports for which requested documentation was not submitted until well over a year after the inspection date. NSD stressed to us that because the FARA

Unit has limited staff and considerable responsibilities follow-up on inspection reports can be difficult. We understand this challenge but believe improvements can still be made. We recommend that NSD further improve its overall monitoring efforts by developing a policy and practices that ensure appropriate and timely follow-up and resolution of findings identified in its inspection reports.

Other Possible Legislative Improvements that the Department Might Seek

Throughout this audit we discussed with NSD and FBI officials whether there were any legislative improvements that the Department might seek to FARA that would help in its efforts to administer and enforce the law. The FBI did not have any suggestions but the NSD officials indicated that in recent years they have pursued some key legislative changes to FARA, but these efforts have largely been unsuccessful.

One area that was identified as a possible subject for such amendments is the statutory exemptions to FARA's registration requirement. There are a number of statutory exemptions to FARA registration requirements, which were summarized on the NSD website as of January 2016 as follows:

- Diplomats and officials of foreign governments, and their staffs, if properly recognized by the U.S. State Department.
- Persons whose activities are of a purely commercial nature or solely of a religious, scholastic, academic, scientific or fine arts nature.
- Certain soliciting or collecting of funds to be used for medical aid, or for food and clothing to relieve human suffering.
- Lawyers engaged in legal representation of foreign principals in the courts or similar type proceedings, so long as the attorney does not try to influence policy at the behest of their client.
- Any agent who is engaged in lobbying activities and is registered under the Lobbying Disclosure Act if the representation is on behalf of a foreign commercial interest rather than a foreign government or foreign political party.

NSD officials indicated to us that broadly worded exemptions make criminal or civil enforcement difficult, though they did not propose any specific changes to these categories. We believe that this is an area that the Department should examine to determine if additional refinement of these categories is warranted.

The Lobbying Disclosure Act and FARA

FARA Unit staff believed that the passage of the Lobbying Disclosure Act (LDA) in 1995 contributed to the steep decline in FARA registrations in the years that followed. We were told that because the LDA allowed agents representing foreign commercial interests to register as lobbyists under LDA, rather than as

foreign agents under FARA, FARA is now largely limited to those who represent foreign governmental and political party interests.

In the FARA Unit's judgment, registration and disclosure requirements under the LDA are less stringent and result in less transparency than FARA, specifically with respect to funds transacted and activities performed. In addition, unlike FARA, lobbyists with income or expenses below certain thresholds are not required to register under LDA. If a lobbyist representing a foreign commercial interest does not meet LDA thresholds, that lobbyist may have no obligation to register under either statute, because the activity serves a commercial rather than foreign governmental or political interest. Moreover, the LDA is administered by the Congress and, according to the FARA Unit, the LDA staffs who reside in the U.S. Senate and U.S. House of Representatives do not perform inspections of registrants, as the FARA Unit does for FARA registrants. FARA Unit staff also expressed concern that because of the LDA amendments to FARA, foreign governmental and commercial interests, which are not always as distinct from one another as in the United States, could use LDA as a loophole to avoid FARA registration and disclosure, even though they are acting under the direction and control of a foreign government.

NSD officials believe that Congress should act and once again require those who lobby for foreign commercial interests to register under FARA. We agree with the concern that foreign governmental and commercial interests overseas may not always be distinct and we recommend that NSD perform a formal assessment of the LDA exemption, along with the other current FARA exemptions and determine whether a formal effort to seek legislative change is warranted.

Civil Investigative Demand Authority

As discussed above, one of the tasks for the FARA Unit is to locate foreign agents who may have an obligation under FARA but either knowingly or unknowingly fail to register. The FARA Unit told us that, when it successfully identifies a potential agent, it can sometimes be difficult to obtain the necessary information the FARA Unit needs to determine whether registration is required. Civil investigative demand authority (CID) allows the Department to compel the production of records, or response to written interrogatories or oral testimony concerning such records. The Department submitted legislative proposals seeking CID authority for the FARA Unit in 1991, and again in 1999. A GAO report in 2008 also recommended CID authority for the FARA Unit.[19] However, the Department's attempts to obtain this authority in 1991 and 1999 were unsuccessful. Neither NSD officials nor the Department's Office of Legislative Affairs could offer an opinion as to why these efforts were unsuccessful; however, FARA Unit staff did provide some insight as to how this authority could help it better determine when FARA violations are occurring, specifically identifying think tanks, non-governmental and grass roots

[19] U.S. Government Accountability Office, *Post-Government Employment Restrictions and Foreign Agent Registration,* GAO-08-855 (July 30, 2008).

organizations, organizations operating on college or university campuses, and foreign media outlets operating in the United States as potential registrants as to which it can be difficult to obtain information for a variety of reasons. Such organizations may receive funding from foreign governments and subsequently take public political positions that are favorable to those governments. According to the FARA Unit, these types of organizations generally claim that they act independently of foreign control or are not serving a predominantly foreign interest and are not required to register.

The FARA Unit has identified the above as its primary enforcement challenge, and believes CID is vital in determining whether FARA violations are occurring. We do not dispute that CID authority would provide FARA Unit staff with a very useful additional tool in in its efforts to administer and enforce FARA. However, we believe CID authority is a powerful authority that can be subject to overreach and abuse if left unchecked, and which cannot be allowed to be used to overcome legitimate and important legal protections and interests. Therefore, we believe that any such expansion of CID authority would have to include rigorous controls and oversight to ensure that it is being used appropriately.

Process for Filing Informational Materials

As discussed earlier in this report, FARA requires registrants who transmit informational materials on behalf of their foreign principal to appropriately mark that material and file it with the Department of Justice within 48 hours of the beginning of transmittal. The FARA Unit told us that the term "informational materials," which replaced the term "propaganda" in 1995, is not formally defined in the Act or its implementing regulation. As a result, the FARA Unit has developed its own working definition of what constitutes informational materials in order to fairly advise registrants of the requirements. However, without a statutory definition of the term "informational materials," the FARA Unit cannot be certain it is satisfying Congressional intent for FARA.

Additionally, the FARA Unit believes that advances in information technology have made the 48-hour rule outdated. Registered foreign agents now send out informational materials via Twitter and other social media on a near-continuous basis. Trying to enforce the requirement for them to submit all of these materials in hard copy within 48 hours of dissemination creates a constant and unrealistic burden on registrants to submit materials, and on FARA personnel to police their submissions. Allocating resources to enforcing the 48 hour rule also would consume a disproportionate amount of time on the part of FARA unit, often to the detriment of other crucial aspects of their work. FARA Unit staff also told us that informational materials mailed via the U.S. Postal Service in hard copy must pass through screening prior to delivery. This often results in submissions being delayed for weeks or longer before arriving at the FARA Unit's office. The FARA Unit believes that the statute should be amended to allow registrants to compile informational materials and submit them semi-annually with each supplemental statement.

Lastly, the FARA Unit believes that the labeling requirement needs to be updated to address the internet and social media as means of conveying informational materials. Twitter, for instance, allows a limited number of characters per message, and the FARA Unit told us that registrants find it impractical to include the disclaimer within these types of messages.

We believe the Department should continue to consider whether to seek legislative changes to address these and other issues as identified in this report consistent with the requirements of FARA and other laws.

Resources

FARA Unit staff told us that budget and staffing have improved since moving from the Criminal Division to NSD in 2006, and that these additional resources have allowed the unit to develop new technologies. The FARA Unit staff spends a significant amount of the time on the collection and processing of FARA filing fees. FARA fees were first imposed on FARA registrants in 1993. As noted above, the FARA Unit believed that this imposition of fees contributed, at least in part, to the substantial decline in registrations that began in the mid-1990s. In addition, we learned that a proposal to increase FARA fees in 2010 was declined by NSD due to concerns that it would deter registrations. Fee collections have also been declining along with registrations since their imposition, and in 2014 totaled only $283,441 according to FARA Congressional reporting. Because of limited staffing, other priorities, and the possibility that fees may serve as a deterrent to registration, we believe it is possible that the overall cost of the time spent collecting and processing fees may not be justifiable. We therefore recommend that NSD conduct a formal cost-benefit analysis to determine whether the current FARA fee structure is appropriate or whether it should seek modifications in the future.

Tools and Technologies

Since joining NSD in 2006, there have been significant improvements to the tools and technologies used to ensure foreign agents comply with FARA. In 2007, the FARA Unit established a searchable online database of disclosure documents. In 2011, an e-file application was established that allowed registrants to register and file documentation online. We were told that the application is currently being updated to implement other improvements that will standardize and eliminate redundant entry of information, improve search capability, and ensure completeness of submissions. It will provide a more user-friendly, interactive guided interview process for entering forms, and the improved application will mask from public view personally identifiable information required on certain forms. Previously, registrants had to formally request removal of this information from the publically available forms.

We believe the e-file application improvements are a positive development. As discussed above, we also believe the application presents opportunities to allow the FARA Unit to better manage and improve the timeliness of registrant submissions, and that it should be developed with this in mind in addition to the

other opportunities it presents. We therefore recommend that NSD include improvement of timeliness as an objective in the development of the e-file system, to include requiring execution dates for all contracts.

Conclusion

We found that FARA registrants are frequently late in submitting required documentation and are often unresponsive to FARA Unit requests to update their information. Because timely and complete disclosure of foreign agent political and quasi-political activities are central to the act, we believe the FARA Unit should be more proactive and assess whether additional tools may be available to assist it in its efforts to identify and monitor these foreign agents. With regard to proposed criminal FARA charges, investigators and prosecutors believe that a greater effort should be made by NSD officials to improve communication, transparency, and responsiveness regarding approval decisions. We believe that there may well be room for the Department to make use of the civil injunctive provision in FARA in appropriate cases. To help address this we believe that the Department should develop a comprehensive enforcement strategy for FARA that fits within its overall national security effort. There also are a number of areas where the Department should consider whether to seek administrative or legislative changes to enhance its efforts to enforce FARA and achieve the purposes for which it was enacted into law.

Recommendations

We recommend that the National Security Division:

1. Consider the value of making FARA advisory opinions publicly available as an informational resource.

2. Update its current training for investigators and prosecutors to include information about the time it takes and the process used by NSD to approve or deny these types of cases for prosecution.

3. Explore with the FBI the feasibility of distinct classification codes for FARA and Section 951 in its record keeping system.

4. Develop a comprehensive strategy for the enforcement and administration of FARA that includes the agencies that perform FARA investigations and prosecutions and that is integrated with the Department's overall national security efforts.

5. Ensure that it timely informs investigators and prosecutors regarding the reasons for decisions not to approve FARA prosecutions.

6. Establish a comprehensive system for tracking the FARA cases received for review, including whether cases are approved for further criminal or civil action, and the timeline for approval or denial.

7. Complete its effort to standardize a system for batching and sending registration delinquency notices at regular intervals, and develop policy and procedures that ensure appropriate follow up on them.

8. Develop a policy and tracking system that ensures that registration files are timely closed and that when agents cease meeting their supplemental filing obligations for an extended period of time an appropriate investigation is conducted.

9. Consider expanding the sources of information beyond those currently used by the FARA Unit to help identify potential or delinquent foreign agents, currently limited to open source internet and LexisNexis searches.

10. Either take steps to improve the compliance rates for the filing of informational materials to achieve the purposes of the Act or, if the Unit considers the current 48-hour standard unreasonable, pursue appropriate modifications.

11. Ensure appropriate and timely follow-up and resolution of findings identified in its inspection reports.

12. Perform a formal assessment of the LDA exemption, along with the other current FARA exemptions and determine whether a formal effort to seek legislative change on any of these exemptions is warranted.

13. Conduct a formal cost-benefit analysis to determine whether the current FARA fee structure is appropriate.

14. Include improvement of timeliness as an objective in the development of the e-file system, to include requiring execution dates for all contracts.

STATEMENT ON INTERNAL CONTROLS

As required by the Government Auditing Standards, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of internal controls was not made for the purpose of providing assurance on the Department's internal control structure as a whole. The Department and the individual components discussed in this report are responsible for the establishment and maintenance of internal controls.

Through our audit testing, we did not identify any deficiencies in the National Security Division's internal controls that are significant within the context of the audit objectives and based upon the audit work performed that we believe would affect the National Security Division's ability to effectively and efficiently operate, to correctly state financial and performance information, and to ensure compliance with laws and regulations.

Because we are not expressing an opinion on the Department's internal control structure as a whole, this statement is intended solely for the information and use of the Department and the individual components discussed in this report. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards* we tested, as appropriate given our audit scope and objectives, selected statistics, procedures, and practices to obtain reasonable assurance that NSD complied with federal laws and regulations for which noncompliance, in our judgment, could have a material effect on the results of our audit. NSD is responsible for ensuring compliance with applicable federal laws and regulations. In planning our audit, we identified the following laws and regulations that were significant within the context of the audit objectives:

- 22 U.S.C. § 611, *et seq*. (Foreign Agents Registration Act)
- 18 U.S.C. § 951
- 2 U.S.C. § 1601, *et seq*. (the Lobbying Disclosure Act of 1995)
- 28 C.F.R. § 5.1, *et seq*.

Nothing came to our attention that caused us to believe that the Department or its components discussed in this report were not in compliance with the aforementioned laws and regulations.

APPENDIX 1

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The U.S. House of Representative Committee on Appropriations requested that the OIG review the Department of Justice's enforcement of the Foreign Agents Registration Act.[20] The Committee requested that the report should take into account FARA filing trends and foreign government tactics to engage in the public advocacy of the United States while avoiding FARA registration, and that the report should recommend administrative or legislative options for the improvement of FARA enforcement.

The objectives of our audit were to review and evaluate the monitoring and enforcement actions taken by the Department to ensure appropriate registration, and to identify areas for the Department to consider seeking legislative or administrative improvements.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To accomplish our objectives, we interviewed staff from National Security Division, including the Counterintelligence and Export Control Section and its FARA Unit. We also interviewed Assistant U.S. Attorneys and FBI counterintelligence agents from all of the district and field offices involved with each FARA investigation we learned of. We spoke with staff from the FBI's Counterintelligence Division and National Security Law Branch and with staff from the Department's Office of Legislative Affairs. We also reviewed FARA registered foreign agent documentation, as well as FARA Unit records and communications.

We attempted to meet with the Clerk of the House and Secretary of the Senate staffs to obtain their views on the Lobbying Disclosure Act issue identified in this report and to learn about any best practices for registrant management and oversight. They instead offered to review and try to answer specific questions in writing, but given time constraints we were not able to pursue that option further.

[20] U.S. House Committee Report Committee Report 113-448.

FBI and USAO Interviews

Because CES does not maintain a record of FARA charges brought to it for review, we began by interviewing AUSAs and FBI agents involved in those FARA charges we learned of through our discussions with CES staff or our review of CES documents. We also interviewed staff at FBI Counterintelligence Division headquarters in Washington, D.C. During these discussions, we learned about additional FARA charges, involving both FARA, 22 U.S.C. 611 *et seq*., and a related statute, 18 U.S.C. § 951 (Section 951). Section 951 provides criminal penalties for certain agents of foreign governments who act in the United States without first notifying the Attorney General. Registration under FARA can serve as the requisite notification. We learned that the FARA Unit is called upon by CES to advise on Section 951 cases. Given this, we considered the information we received about Section 951 cases during our interviews.

FARA Document Review

To review FARA Unit monitoring of existing registrants, we selected a judgmental, risk based sample of 22 percent of the total registered agents as of May 2015. Factors in selecting our sample included payment amounts, weighted toward the more active registrants; and anomalies such as duplicate registrations and apparent discrepancies between long and short form registrations. We did not intend this sample to be projected to the universe of registered agents.

After we selected the sample, we reviewed documentation submitted by selected agents during calendar years 2013, 2014, and 2015. We reviewed all documents submitted including initial registration and accompanying exhibits, supplemental statements, amendments, and informational materials. We elected not to include short form registrations, which include information about the registrant's individual employees engaged in activities in furtherance of the foreign principal's interests, in our testing because these forms included personally identifiable information.

APPENDIX 2

PRIOR REPORTS INVOLVING FARA

Our research and interviews with FARA Unit personnel has identified four reports prepared by the General Accounting Office (now known as the Government Accountability Office), one report from the Project on Government Oversight (POGO), and one report from the Sunlight Foundation all which dealt with the execution and administration of the Foreign Agents Registration Act (FARA). Although some of these reports are over 10 years in age, they have identified some of the same issues discussed in this report. These issues include timeliness and adequacy of information submitted on behalf of registrants, not making full use of its authority to enforce the act and related regulations, efforts to have civil investigative demand authority (CID) passed denied, and the lack of tools required and necessary to enforce the statue properly.

In 1974, the General Accounting Office, now known as the Government Accountability Office, issued a report titled, *Effectiveness of the Foreign Agents Registration Act of 1938, As Amended, and Its Administration by the Department of Justice*. At the time of the report, the General Accounting Office reported that many agents' statements to the Department of Justice were not filed on a timely basis or lacked sufficient detail to adequately describe the registered agents' activities on behalf of their foreign principals. The report also stated that the Department of Justice was not making full use of its authority to enforce the act and related regulations.

In 1980, the General Accounting Office, now known as the Government Accountability Office, issued a follow-up report to their 1974 report titled, *Improvements Needed in the Administration of Foreign Agents Registration.* The General Accounting Office reported that despite the Department of Justice's efforts to improve the administration of the act, people were acting as foreign agents without registering, registered agents were not fully disclosing their activities, and officials in the executive branch were often unaware of the act's requirements. Thus, the act's goal of providing the public with sufficient information on foreign agents and their activities was not completely fulfilled.

In 1990, the General Accounting Office, now known as the Government Accountability Office, issued an update to its 1980 report titled, *Foreign Agent Registration: Justice Needs to Improve Program Administration.* The report was issued to provide the United States Senate an update of the prior 1980 report. The purpose of the report was to apprise on whether the recommendations made in the 1980 report have been implemented and if foreign agents are complying with the law by registering with the Department of Justice, by fully disclosing their activities, and by filing required reports on time. The report noted deficiencies; including lateness and inadequately disclosing forms from foreign principals. The General Accounting Office explained that both foreign agents and the Department of Justice officials who review the agents' registration forms lack specific written guidance on what should be reported.

In 2008, the Government Accountability Office issued a report titled, *Post-Government Employment Restrictions and Foreign Agent Registration.* The Government Accountability Office reported that in order for the Department of Justice to enhance their ability to ensure that the American people know the identity of persons trying to influence the United States government policy on behalf of foreign entities, Congress may wish to consider granting the Department of Justice civil investigative demand authority (CID). This recommendation was essentially closed and not implemented as Congress did not take any action in response to this matter.

In 2014, the Sunlight Foundation, issued a report titled, *Sunlight Foundation Recommendations to the Department of Justice Regarding the Foreign Agents Registration Act.* The Sunlight Foundation reported that the current method of recording the disseminated material submitted by foreign agents is outdated and is not fully transparent. Sunlight explained that an implementation of a new, modernized FARA collection and disclosure system that collects and releases detailed structured data would promote greater transparency.

Finally in 2014, the Project on Government Oversight (POGO), issued a report titled, *Loopholes, Filing Failures, and Lax Enforcement: How the Foreign Agents Registration Act Falls Short.* POGO reported that countless documents in the FARA database do not conform to the requirements of the FARA statue. Furthermore, POGO reports, that it is next to impossible to determine if the 573 U.S. firms, corporations, and individuals registered with FARA, between their scope of 2009 and 2012, filed every document they disseminated. POGO concluded that the Department of Justice must use the enforcement power it has to ensure that registrants, and those who do not register, comply with all aspects of the law. Merely relying on “voluntary compliance” allows for rampant rule breaking in the timely filing and labeling of informational materials.

APPENDIX 3

NATIONAL SECURITY DIVISION'S RESPONSE TO DRAFT REPORT

U.S. Department of Justice

National Security Division

National Security Division *Washington, D.C. 20530*

August 12, 2016

Jason R. Malmstrom
Assistant Inspector General for Audit
Office of the Inspector General

RE: OIG's Draft Audit Report –The National Security Division's Enforcement and Administration of the Foreign Agents Registration Act

Dear Mr. Malmstrom:

The National Security Division (NSD) appreciates the opportunity to review and provide comments to the Office of Inspector General's Draft Audit Report (Report) concerning NSD's Enforcement and Administration of the Foreign Agents Registration Act (FARA or the Act), which you provided to NSD on July 22, 2016. NSD provides below general comments on the Report, followed by specific comments on the 14 recommendations contained in the Report.

General Comments

The enforcement and administration of FARA is an important responsibility of NSD, and NSD appreciates the time and effort taken by the Office of the Inspector General (OIG) to conduct this audit. In addition to providing overall perspective in assessing the administration and enforcement of FARA, the audit was helpful in reviewing some trends in registrations, the timeliness and sufficiency of FARA registration filings, and some areas for administrative or legislative improvements to achieve FARA's primary goal: greater transparency of foreign influence in the United States. NSD was pleased to have the opportunity to inform OIG of the complexities of FARA and the challenges NSD faces in applying FARA's criminal and civil enforcement provisions. The audit prompted a productive dialogue about the criminal enforcement of FARA and the key role administrative authorities play in promoting visibility into the identities, activities, and information provided by persons acting as agents of foreign principals. NSD anticipates that the audit will lead to improved efforts to help others better understand FARA's role, as well as increase the Act's effectiveness.

As noted in the report, the OIG interviewed AUSAs and FBI personnel who complimented NSD's Counterintelligence and Export Control Section's (CES) evaluation of FARA cases and specifically noted the sound judgment, experience, and expertise of CES in handling FARA investigations. The AUSAs and FBI personnel also praised the new leadership

at CES for its candid assessment of cases and communication with the FBI and U.S. Attorney's Offices.[1]

Although OIG's report reflects some criticism of aspects of NSD's review of FARA cases, NSD notes at the outset, as OIG acknowledged in the Report, that personnel interviewed in preparation of the Report frequently confused FARA (22 U.S.C. § 611 *et seq*) with 18 U.S.C. § 951 ("Section 951"), a criminal statute entitled "Agents of foreign governments." Although the two statutes have similar terms, they address different types of conduct. The typical conduct to which Section 951 applies consists of espionage-like behavior, information gathering, and procurement of technology, on behalf of foreign governments or officials. FARA, on the other hand, is designed to provide transparency regarding efforts by foreign principals (a term defined more broadly than foreign governments or officials) to influence the U.S. government or public through public speech, political activities, and lobbying. Accordingly, Section 951 is codified in Title 18 of the U.S. Code (designated for "Crimes and Criminal Procedure"), while FARA is codified in Title 22 (designated for "Foreign Relations"). Section 951 is aimed exclusively at criminally punishing individuals who violate its terms, and lacks a formal administrative registration regime. FARA, in contrast, is predominantly a disclosure statute, under which there is an administrative registration regime, and while the Act authorizes criminal penalties for willful violations, the primary means of achieving FARA's main purpose of transparency is through voluntary disclosure in compliance with the Act. The mistaken conflation of the two statutes can lead to undue weight being given to criminal prosecution as the measure of FARA enforcement and insufficient recognition of the significance of administrative enforcement efforts relating to the FARA registration regime. It is therefore essential to understand the distinctions between FARA and Section 951 for purposes of this audit, the scope of which is expressly limited to the enforcement and administration of FARA.[2]

The administrative enforcement efforts undertaken by FARA Unit staff focus on identifying foreign agents with an obligation to register and achieving compliance with the Act's provisions. Actions undertaken by FARA Unit staff in furtherance of these goals include: combing public source information for prospective registrants; reviewing registration materials submitted by existing registrants and inspecting registrants' books and records for information pertaining to registration obligations for other entities and individuals; analyzing referrals or information provided by other government agencies or offices; and reviewing information obtained from the public. Based on that work, FARA Unit staff draft and issue letters to

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[1] To NSD's knowledge, during its audit, OIG did not contact or interview any existing FARA registrants or firms that represent FARA registrants, although NSD provided contact information for those groups. Existing FARA registrants and firms who represent FARA registrants are significant stakeholders who have extensive knowledge of and experience with the administration and enforcement of FARA. NSD understands that OIG did seek to interview officials at the U.S. House of Representatives and U.S. Senate who are responsible for the administration of the Lobbying Disclosure Act ("LDA"), a statute which has certain overlaps with FARA, although those officials declined to be interviewed. NSD believes those officials also may possess useful insights into FARA's administration and enforcement.

[2] NSD further notes that in the Report, the OIG states that they "were told by FBI that their case coding commingles both FARA and Section 951 cases" and therefore the OIG was "unable to isolate cases presented under FARA alone." For this reason, among others, NSD believes that many of the references in the Report to *FARA* cases or investigations were actually references to cases or investigations relating to *Section 951*.

individuals or entities they identify who may have an obligation to register. In those letters, they outline the information potentially giving rise to an obligation to register and seek information to make a determination regarding that obligation. They analyze the responses to those letters and continue to research public information to assess whether a registration obligation does in fact exist. The letters they send frequently result in the filing of registrations by the individuals or entities, thus achieving FARA's transparency purpose. Once a registration is on file, FARA Unit staff carefully reviews registration filings for deficiencies, seeks amendments to correct those deficiencies, and conducts inspections (and follow-up inspections) to ensure continued compliance. FARA Unit staff also provides advisory opinions regarding the application and requirements of the Act.

In addition to activities devoted to administrative enforcement of the Act, FARA Unit personnel produce and process a significant volume of registration forms and associated filing fees; provide support, guidance, and assistance to registrants, potential registrants, their attorneys, and other government agencies concerning FARA issues; produce a semi-annual report to Congress; maintain a public office reading room; process a high volume of database searches for the FBI, Department of Homeland Security, Senate Foreign Relations Committee, and other government agencies; handle frequent media inquiries; and assist numerous members of the public with registration and search guidance through in-person meetings, e-mail exchanges, and telephone inquiries. They perform all of these duties while maintaining and enhancing the FARA e-File system and database, and while providing extensive customer service to users of the system.

As noted above and in the Report, FARA contains a criminal penalty provision, and NSD approves criminal prosecution as an enforcement mechanism if there is sufficient admissible evidence of a willful violation of FARA, and the standards applicable to all federal criminal prosecutions set forth in the U.S. Attorney's Manual are otherwise satisfied. The high burden of proving willfulness, difficulties in proving "direction and control" by a foreign principal, and exemptions available under the statute make criminal prosecution for FARA violations challenging. These challenges are compounded by the government's current inability to compel the production of records from potential and current registrants, a situation NSD is working to remedy by proposing legislation for consideration by the Department of Justice (Department). Despite these challenges, the Department has brought four FARA criminal cases since 2007, all of which resulted in convictions (one conviction at trial for conspiracy to violate FARA and other statutes; two guilty pleas for violating FARA; and one guilty plea to related non-FARA charges).

The OIG Report, however, also cites a view that the limited number of FARA criminal prosecutions is indicative of a counterintelligence tool that is underutilized. To demonstrate this, the Report refers to a belief by some FBI staff that the prospect of FARA charges might assist in obtaining cooperation from FARA violators, presumably in counterintelligence investigations. This, again, is most likely indicative of a mistaken conflation of Section 951 with FARA. It might be possible to use Section 951 in this manner; however, given the considerable challenges cited above in developing viable, appropriate prosecutions for FARA-related activity, such a use of FARA to obtain cooperation is unlikely at best. By promoting disclosures that unmask foreign political influence and foreign direction of political activities, FARA is an effective

counterintelligence tool. In the alternative, a reluctance to register and disclose under FARA can, in fact, deter a foreign principal from engaging in political activities in the United States in the first place.

The Report devotes significant emphasis to the timeliness of filings by registrants. NSD notes that well over half of the filings categorized as late were filed within 30 days after the filing deadline. In addition, in a number of filings considered late in the Report, the FARA Unit provided an extension to the registrant, which mitigated the lateness. Under FARA's current statutory and regulatory authorities, there is no penalty for lateness. Although the Department previously has proposed legislation imposing fines for late filing under FARA, NSD's recent assessment is that imposing fines for late filing could act as a disincentive to registration and result in less transparency. Many parties who register late do so because they are unaware of the existence of FARA. Penalizing someone who, when informed about the Act, complies with the statute, could serve as a deterrent to registration. NSD believes that encouraging disclosure is preferable to fines in furthering the national security mission of FARA.

OIG Recommendations

1. **OIG Recommendation** – Consider the value of making FARA advisory opinions publicly available as an information resource.

   NSD Response – Agree. Prior to this audit, NSD determined it was appropriate to release, in response to specific FOIA requests, redacted versions of advisory opinions issued to persons who subsequently registered based on the decision in the advisory opinion. By March 31, 2017, NSD will review its policy and practices regarding FARA advisory opinions and determine how to expand public accessibility of these opinions.

2. **OIG Recommendation** – Update its current training for investigators and prosecutors to include information about the time it takes and the process used by NSD to approve or deny these types of cases for prosecution.

   NSD Response – Agree. NSD will continue to update and provide training for investigators and prosecutors regarding FARA, to include information about the time it takes and the process used by NSD to approve or deny FARA cases for prosecution. NSD already commenced efforts to enhance prosecutors' understanding of FARA with multiple presentations to prosecutors and law enforcement partners around the country in 2016. These presentations delineated the differences between FARA and Section 951, and highlighted the types of cases suitable for prosecution under each statute. NSD will continue to deliver such training to prosecutors and agents. In addition, CES has initiated preparation of a monograph on FARA and Section 951 for broad dissemination to prosecutors and agents. NSD anticipates completion of the monograph by September 30, 2017.

3. **OIG Recommendation** – Explore with the FBI the feasibility of distinct classification codes for FARA and Section 951 in its record keeping system.

   NSD Response – Agree. Although the FBI already has distinct codes, as indicated in the Report, FBI personnel often commingle the coding, causing confusion. It is imperative that agents are aware of the correct code to use for FARA investigations, and NSD will meet with the FBI prior to September 30, 2016 to explore resolution of this issue.

4. **OIG Recommendation** – Develop a comprehensive strategy for the enforcement and administration of FARA that includes the agencies that perform FARA investigations and prosecutions and that is integrated with the Department's overall national security efforts.

   NSD Response – Agree. NSD agrees with the importance of having a comprehensive strategy regarding FARA that is integrated within the Department's overall national security efforts. In fact, in March 2015, NSD conducted its own written internal assessment of the existing strategy for enforcement and administration of FARA, identifying key current issues and strategies for addressing them, and then took active steps to implement those new strategies. The Department has an "all tools" approach to addressing national security threats, and NSD currently includes FARA as one of those tools. Efforts to enforce compliance with FARA include research, identification of potential agents, inquiry, investigation, and prosecution if willful conduct is found. FARA fits into the Department's overall national security efforts by promoting detection of, discouraging, and neutralizing undisclosed foreign messaging and forcing disclosure of foreign efforts to influence United States domestic and foreign policy, as well as public opinion. As noted above, CES has initiated preparation of a monograph on FARA and Section 951 for broad dissemination to prosecutors and agents that it anticipates will be completed by September 2017. This will clarify for agencies the use of FARA and Section 951, and NSD also will include discussion of its comprehensive strategy in its ongoing training for investigators and prosecutors. NSD's comprehensive strategy will include updates to its FARA-related training materials to provide helpful information regarding NSD's evaluation of potential criminal cases under FARA. These updates will be included in all FARA-related training presentations going forward.

5. **OIG Recommendation** – Ensure that it timely informs investigators and prosecutors regarding the reasons for decisions not to approve FARA prosecutions.

   NSD Response – Agree. As noted in the OIG Report, CES has taken steps to ensure that it timely informs investigators and prosecutors in individual cases regarding the reasons for not approving FARA charges and will continue these efforts in all FARA investigations and prosecutions. In addition, as discussed in the response to OIG Recommendation 2 and 4, NSD is updating its FARA-related training materials to provide helpful information regarding NSD's evaluation of potential criminal cases under FARA. These updates will be included in all FARA-related training presentations going forward.

6. **OIG Recommendation** – Establish a comprehensive system for tracking the FARA cases received for review, including whether cases are approved for further criminal or civil action, and the timeline for approval or denial.

   NSD Response – Agree. NSD will improve tracking of FARA matters through: (1) the efforts set forth in Recommendation 3 above regarding working with the FBI to ensure FARA matters are coded correctly; and (2) improvements to NSD's case tracking system to ensure ready identification of those FARA matters. Moreover, NSD will ensure the case tracking system captures actions that are taken and approved, and, consistent with Recommendations 2 and 5, also captures dates the matter was received, as well as dates of actions and approvals. As noted above, NSD will meet with FBI on the coding issue prior to September 30, 2016. Improvements to the case tracking system to ensure identification of FARA matters will take place on an ongoing basis as NSD's new case management system is developed and implemented during 2016 and 2017.

7. **OIG Recommendation** – Complete its effort to standardize a system for batching and sending registration delinquency notices at regular intervals, and develop policy and procedures that ensure appropriate follow up on them.

   NSD Response – Agree. NSD is committed to completing its current effort to standardize a system for batching and sending registration delinquency notices at regular intervals, and to develop policy and procedures that ensure appropriate follow-up. During the past year, the FARA Unit has standardized a system for batching and sending registration delinquency notices at regular intervals. It is currently in the process of expanding on this system to ensure appropriate tracking of responses, and estimates that the enhancement will be completed by September 30, 2017. When the system is complete, NSD will ensure that FARA Unit personnel will be able to adequately and efficiently track compliance and that they take appropriate measures to address delinquency.

8. **OIG Recommendation** – Develop a policy and tracking system that ensures that registration files are timely closed and that when agents cease meeting their supplemental filing obligations for an extended period of time an appropriate investigation is conducted.

   NSD Response – Agree. NSD will develop a policy and tracking system that ensures that registration files are timely closed and that appropriate action is taken when supplemental filing obligations are not met for an extended period of time. NSD's current efforts to update its system for batching and sending registration delinquency notices at regular intervals will help to identify candidates for termination. These upgrades will help to determine which registrants are no longer active and enable the FARA Unit to take appropriate action to terminate the registrations. NSD anticipates this policy will be developed by March 31, 2017.

9. **OIG Recommendation** – Consider expanding the sources of information beyond those currently used by the FARA Unit to help identify potential or delinquent foreign agents, currently limited to open source internet and LexisNexis searches.

   NSD Response – Agree. NSD agrees that expansion of sources of information would assist in identifying potential or delinquent foreign agents. NSD has already engaged in outreach to other government agencies that might have access to additional information that would assist the FARA Unit's efforts. NSD will continue to pursue that outreach on an ongoing basis and also will work to identify other sources of information that would be useful to the Unit in fulfilling its mission.

10. **OIG Recommendation** – Either take steps to improve the compliance rates for the filing of informational materials to achieve the purposes of the Act or, if the Unit considers the current 48-hour standard unreasonable, pursue appropriate modifications.

    NSD Response – Agree. NSD considered this issue and determined that the 48-hour rule is out of date and unreasonable. To that end, NSD drafted appropriate modifications to address this issue that are being reviewed within the Department.

11. **OIG Recommendation** – Ensure appropriate and timely follow-up and resolution of findings identified in its inspection reports.

    NSD Response – Agree. Many of the inspections conducted by the FARA Unit are conducted to correct deficiencies in registrations, and to bring into compliance untimely registrations. NSD notes that OIG viewed most (87.4 percent) inspection follow-up as timely. To ensure appropriate and timely follow-up and resolution of inspections, the FARA Unit's efforts with respect to Recommendation 7 and 8 above will provide benefits here as well. In addition, the FARA Unit will standardize its electronic calendaring of inspections and timelines for completion of recommendations after inspections. NSD expects enhancements to its inspection practices to be completed by September 30, 2017.

12. **OIG Recommendation** – Perform a formal assessment of the LDA exemption, along with the other current FARA exemptions and determine whether a formal effort to seek legislative change on any of these exemptions is warranted.

    NSD Response – Agree. NSD endorses, and will undertake, a formal assessment of the LDA and other current FARA exemptions. As noted in the Report, the FARA Unit has attributed a decrease in the number of registrants and foreign principals to the enactment of the LDA exemption and has also noted that the reporting requirements of LDA are not as robust as those under FARA. Prior to the OIG Report, NSD embarked on efforts to study the LDA and other FARA exemptions. Those efforts will continue, and NSD will determine the need and viability of legislative changes by June 30, 2017.

13. **OIG Recommendation** – Conduct a formal cost-benefit analysis to determine whether the current fee structure is appropriate.

NSD Response – Agree. NSD will conduct a formal cost-benefit analysis to determine whether the current fee structure is appropriate by September 30, 2017. Included in this analysis will be an assessment of whether the processing of fees takes valuable time and resources of the FARA Unit that could be better utilized on enforcement.

14. **OIG Recommendation** – Include improvement of timeliness as an objective in the development of the eFile system, to include requiring execution dates for all contracts.

NSD Response – Agree. The FARA Unit has discussed this issue with the FARA eFile system development team and has received positive feedback that it is feasible to add a field to the eFile system to collect the date of the registrant's agreement with the foreign principal. This feature will be included in the roll out of the FARA eFile system, which is anticipated by September 30, 2017.

Conclusion

NSD appreciates the time and effort of the OIG in conducting its audit. The enforcement and administration of FARA is an important responsibility, and NSD welcomes the opportunity to improve efforts to help others better understand FARA's administration and enforcement, as well as increase the Act's effectiveness.

Sincerely,

G. Bradley Weinsheimer
Acting Chief of Staff
National Security Division

APPENDIX 4

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

The Office of the Inspector General (OIG) provided a draft of this audit report to the National Security Division (NSD). NSD's response is incorporated in Appendix 3 of this final report. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

Analysis of NSD Response

In its response, NSD agreed with each of our recommendations and discussed the actions it will implement in response. NSD also provided general comments on the report. In its general comments, NSD reemphasized what NSD officials told us during the audit - although 22 U.S.C. § 611, *et seq.* (FARA) and 18 U.S.C. § 951 (Section 951) have similar terms, they address different types of conduct. NSD also reemphasized that it generally disagrees with investigators who believe that FARA can serve as an effective tool to compel the development of cooperating sources. We acknowledge both of NSD's points in the report and continue to believe that these differing understandings among key personnel are the result of insufficient training on FARA for field investigators and the lack of a comprehensive FARA enforcement strategy within the Department. As we state in the report, we believe our recommendations, once implemented, have the potential to greatly improve the Department's overall FARA enforcement efforts by helping to ensure that field personnel and NSD officials are in agreement on their approach to these important statutes.

NSD also noted in a footnote to its general comments that the OIG did not interview any FARA registrants. NSD is correct. The OIG determined that although FARA registrants might be in a position to offer an opinion about their interactions with NSD, interviewing these individuals would not significantly advance our objective to evaluate the monitoring and enforcement actions taken by the Department to ensure appropriate registration and to identify areas where the Department might make administrative or seek legislative improvements to its FARA enforcement efforts. In performing our audit, we ensured that we performed appropriate analysis and conducted numerous interviews, including discussions with individuals external to NSD and the Department of Justice, who provided us with an appropriate and sufficient understanding of FARA administration and enforcement.

Lastly, in its general comments, NSD addressed our findings with respect to late submissions by FARA registrants. NSD stated that for a number of filings we considered to be late in the report, the FARA Unit had provided an extension to the registrant, which mitigated the lateness. In our review and analysis of registrant documentation during our audit, we included all extensions that we found within registrant files in calculating the timeliness of submitted documentation and, as a result, believe that our calculations accurately reflect the timeliness of submissions.

Summary of Actions Necessary to Close the Report

1. Consider the value of making FARA advisory opinions publicly available as an informational resource.

Resolved. NSD agreed with our recommendation. In its response, NSD stated that by March 31, 2017, it would review its policy and practices regarding FARA advisory opinions and determine how to expand public accessibility.

This recommendation can be closed when we receive evidence that this review was conducted and of the actions taken as a result of the review.

2. Update its current training for investigators and prosecutors to include information about the time it takes and the process used by NSD to approve or deny these types of cases for prosecution.

Resolved. NSD agreed with our recommendation. In its response, NSD stated it would continue to update its FARA training for investigators and prosecutors, to include information about the time it takes and the process used by NSD to approve or deny FARA cases.

This recommendation can be closed when we receive evidence that the relevant training was updated and provided to prosecutors and agents.

3. Explore with the FBI the feasibility of distinct classification codes for FARA and Section 951 in its record keeping system.

Resolved. NSD agreed with our recommendation. In its response NSD noted that, to its understanding, the FBI already has distinct classification codes for these statutes. However, NSD also acknowledged possible confusion and commingling of those codes. We note that we asked FBI officials about its classification codes for FARA cases both during our audit and subsequent to the issuance of our draft report to NSD, and were told by the FBI that both statutes are recorded under a single FARA code. NSD stated it intends to meet with FBI prior to September 30, 2016, to explore resolution of this issue.

This recommendation can be closed when we receive evidence that NSD explored with the FBI the feasibility of distinct classification codes in its record keeping system.

4. Develop a comprehensive strategy for the enforcement and administration of FARA that includes the agencies that perform FARA investigations and prosecutions and that is integrated with the Department's overall national security efforts.

Resolved. NSD agreed with our recommendation. In its response, NSD stated that it has conducted an internal assessment of FARA enforcement and administration and has begun implementing strategies resulting from that assessment. NSD's response stated that FARA fits into the Department's overall national security efforts by promoting the detection of, discouraging, and neutralizing undisclosed foreign messaging, and forcing disclosure of foreign efforts to influence United States foreign and domestic policy and public opinion. NSD's comprehensive strategy will include updates to FARA training materials to provide helpful information regarding NSD's evaluation of FARA criminal charges.

This recommendation can be closed when we receive evidence of a completed comprehensive strategy that includes the agencies that perform FARA investigations and prosecutions and is integrated with the Department's overall national security efforts.

5. Ensure that it timely informs investigators and prosecutors regarding the reasons for decisions not to approve FARA prosecutions.

Resolved. NSD agreed with our recommendation. In its response, NSD stated it has taken steps to ensure that it timely informs investigators and prosecutors in individual cases regarding the reasons for FARA decisions. NSD added that it intends to update training materials to provide helpful information regarding evaluation of FARA charges.

This recommendation can be closed when we receive evidence of the steps described and of the updated training materials.

6. Establish a comprehensive system for tracking the FARA cases received for review, including whether cases are approved for further criminal or civil action, and the timeline for approval or denial.

Resolved. NSD agreed with our recommendation. In its response, NSD stated it intends to address this recommendation by addressing classification coding with FBI as described in recommendation 3 above, and by improvements to NSD's case tracking system to ensure ready identification of FARA matters, to include dates of receipt, action, and approval of FARA matters. Case tracking improvements are anticipated to take place during 2016 and 2017.

This recommendation can be closed when we receive evidence of the classification code resolution with FBI, and of a case tracking system that includes information about approval for further criminal or civil action, and the timeline for approval or denial.

7. Complete its effort to standardize a system for batching and sending registration delinquency notices at regular intervals, and develop policy and procedures that ensure appropriate follow up on them.

Resolved. NSD agreed with our recommendation. In its response, NSD stated that in the past year it has standardized a system for batching and sending registration delinquency notices at regular intervals. NSD also noted that it is currently in the process of expanding the system, which is anticipated to be complete by September 30, 2017. Additionally, NSD stated that it is committed to developing policy and procedures that ensure appropriate follow-up. NSD stated that upon completion of the delinquency notice system, it will ensure FARA Unit staff adequately and efficiently track compliance and take appropriate measures to address delinquency.

This recommendation can be closed when we receive evidence of the completion and implementation of the delinquency notice system, and policy and procedures to ensure appropriate follow-up.

8. **Develop a policy and tracking system that ensures that registration files are timely closed and that when agents cease meeting their supplemental filing obligations for an extended period of time an appropriate investigation is conducted.**

Resolved. NSD agreed with our recommendation. In its response, NSD stated it intends to address this recommendation through the development of the delinquency notice system described in recommendation 7 above, which will help identify candidates for termination, and through the development of policy to ensure registration files are timely closed and appropriate actions are taken when obligations are not met for an extended period of time. NSD anticipates this policy will be developed by March 31, 2017.

This recommendation can be closed when we receive evidence of the completion and implementation of the delinquency notice system, a policy is implemented to ensure registration files are timely closed, and appropriate actions are taken when obligations are not met for an extended period of time.

9. **Consider expanding the sources of information beyond those currently used by the FARA Unit to help identify potential or delinquent foreign agents, currently limited to open source internet and LexisNexis searches.**

Resolved. NSD agreed with our recommendation. In its response, NSD stated it has already engaged in outreach to other government agencies that might have such sources of information. NSD stated it will continue to pursue that outreach on an ongoing basis, and additionally will work to identify additional sources of information.

This recommendation can be closed when we receive evidence of such outreach and identification.

10. Either take steps to improve the compliance rates for the filing of informational materials to achieve the purposes of the Act or, if the Unit considers the current 48-hour standard unreasonable, pursue appropriate modifications.

Resolved. NSD agreed with our recommendation. In its response, NSD stated it has determined the 48-hour standard is out of date and unreasonable. NSD has drafted appropriate modifications to address the issue which are under review within the Department of Justice.

This recommendation can be closed when we receive evidence of the modifications or steps taken to improve the compliance rates for the filing of informational materials.

11. Ensure appropriate and timely follow-up and resolution of findings identified in its inspection reports.

Resolved. NSD agreed with our recommendation. In its response, NSD stated that, in addition to its actions with respect to recommendations 7 and 8 above, the FARA Unit will standardize its electronic calendaring of inspections and timelines for completion, anticipated to be complete by September 30, 2017.

This recommendation can be closed when we receive evidence of appropriate and timely follow-up and resolution of findings identified in inspection reports.

12. Perform a formal assessment of the LDA exemption, along with the other current FARA exemptions and determine whether a formal effort to seek legislative change on any of these exemptions is warranted.

Resolved. NSD agreed with our recommendation. In its response, NSD stated that it has already embarked on a study of Lobbying Disclosure Act and other exemptions, that these efforts will continue, and that NSD will make determinations with respect to need and viability of legislative changes by June 30, 2017.

This recommendation can be closed when we receive evidence of the completed LDA assessment and the results of any additional exemption assessments performed by NSD.

13. Conduct a formal cost-benefit analysis to determine whether the current FARA fee structure is appropriate.

Resolved. NSD agreed with our recommendation. In its response, NSD stated it will conduct a formal cost benefit analysis of the fee structure by September 30, 2017.

This recommendation can be closed when we receive evidence of that analysis and NSD's resulting decision about the current fee structure.

14. Include improvement of timeliness as an objective in the development of the e-file system, to include requiring execution dates for all contracts.

Resolved. NSD agreed with our recommendation. In its response, NSD stated it has determined it is feasible to add a field to collect execution dates for all contracts; however, NSD's response was silent on the overarching issue of incorporating timeliness as an objective in the development of the e-file system, beyond the specific contract date issue. We continue to believe that e-file presents opportunities to better manage and ultimately improve registrant timeliness, and recommend that e-file develop with timeliness as a consideration.

This recommendation can be closed when we receive documentation demonstrating that NSD has included the improvement of timeliness as an objective in the development of the e-file system, including the requirement of execution dates for all contracts.

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Office of the Inspector General
U.S. Department of Justice
www.justice.gov/oig

Exhibit L

The SPEAKER pro tempore. The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

Amendment No. 23: Page 11, line 12, strike out "as amended by the Flood Control Act, approved June 15, 1936 (49 Stat. 1508)" and insert "as amended and supplemented."

Mr. SNYDER of Pennsylvania. Mr. Speaker, I move to recede and concur in the Senate amendment numbered 23 with an amendment which I send to the desk and ask to have read.

The Clerk read as follows:

In lieu of the matter inserted by the Senate in place of the matter proposed by the House, insert the following: "As at present or subsequently amended and supplemented."

The SPEAKER pro tempore. The question is on agreeing to the motion of the gentleman from Pennsylvania.

The motion was agreed to.

The SPEAKER pro tempore. Without objection, motions to reconsider the several motions which have been agreed to will be laid on the table.

There was no objection.

REGISTRATION OF CERTAIN PERSONS DISSEMINATING PROPAGANDA

Mr. CELLER. Mr. Speaker, I call up the conference report on the bill (H. R. 1591) to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes, and ask unanimous consent that the statement be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York that the statement be read in lieu of the report.

There was no objection.

The conference report and statement are as follows:

CONFERENCE REPORT

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 1591) to require the registration of certain persons employed by agencies to disseminate propaganda in the United States, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 2, 3, and 4.

That the House recede from its disagreement to the amendment of the Senate numbered 1 and agree to the same.

HATTON W. SUMNERS,
EMANUEL CELLER,
U. S. GUYER,
Managers on the part of the House.

KEY PITTMAN,
PAT MCCARRAN,
WM. E. BORAH,
Managers on the part of the Senate.

STATEMENT

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill (H. R. 1591) to require the registration of certain persons employed by agencies to disseminate propaganda in the United States and for other purposes, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report.

There were four Senate amendments to the bill, two of which were clerical.

The first amendment of the Senate reworded the definition of "foreign principal." The amendment is made apparent by printing the House provision in roman with matter stricken out by the Senate amendment enclosed in black brackets, and new matter added by the Senate amendment in italics, as follows:

"(c) The term 'foreign principal' means the government of a foreign country, a political party of a foreign country, a person [not a resident of the United States, or any foreign business or political organization] *domiciled abroad, or any foreign business, partnership, association, corporation, or political organization.*"

The House conferees agreed to this amendment.

The second amendment of the Senate added a new section to the bill authorizing an appropriation of $75,000 for the enforcement of the act. The Senate receded and this amendment has been omitted.

The third and fourth amendments of the Senate were merely changes of section numbers made necessary by the adoption of the second amendment. Inasmuch as the second amendment has been omitted, these amendments are unnecessary and have been omitted also.

HATTON W. SUMNERS,
EMANUEL CELLER,
U. S. GUYER,
Managers on the part of the House.

Mr. CELLER. Mr. Speaker, this bill was introduced as a result of recommendations of the special committee that was appointed in the Seventy-third Congress to investigate un-American activities in the United States. A very careful study was made of the organizations in this country which organizations aimed arbitrarily to group certain American citizens and persons in the United States and to inculcate such principles and teachings in these persons as to influence the internal and external political policies of our country.

Incontrovertible evidence has been submitted to prove that there are many persons in the United States representing foreign governments or foreign political groups who are supplied by such foreign agencies with funds and other materials to foster un-American activities and to influence the external and internal policies of this country, thereby violating both the letter and the spirit of international law, as well as the democratic basis of our own American institutions of government.

Evidence before the Special Committee on Un-American Activities disclosed that many of the payments for this propaganda service were made in cash by the consul of a foreign nation, clearly giving an unmistakable inference that the work done was of such a nature as not to stand careful scrutiny.

As a result of such evidence this bill was introduced, the purpose of which is to require all persons who are in the United States for political propaganda purposes—propaganda aimed toward establishing in the United States a foreign system of government, or group action of a nature foreign to our institutions of government, or for any other purpose of a political propaganda nature—to register with the State Department and to supply information about their political propaganda activities, their employers, and the terms of their contracts.

This required registration will publicize the nature of subversive or other similar activities of such foreign propagandists, so that the American people may know those who are engaged in this country by foreign agencies to spread doctrines alien to our democratic form of government or propaganda for the purpose of influencing American public opinion on a political question.

Under the terms of the bill no foreign corporation engaged in honorable trade relations with this country will find it necessary to register, but whenever representatives are sent here to spread by word of mouth, or by the written word, the ideology, the principle, and the practices of other forms of government and the things for which they stand, then registry must be made. All that is required is to label the sources of pernicious propaganda.

There is nothing in the bill to offend any nation, group, or individual. The bill requires no registration of duly accredited diplomatic or consular officials of a foreign government who are so recognized by the Department of State of the United States. Likewise will the provisions of this measure have no reference to nor include any person performing only private, nonpolitical, financial, mercantile, commercial, or other activity in furtherance of bona fide trade or commerce of a foreign principal.

This bill does not in any way impair the right of freedom of speech, or of a free press, or other constitutional rights. On the other hand, this measure does provide that an alien coming to or in the United States for propaganda purposes of a political nature, and American citizens who accept foreign political propaganda employment, shall register; and this was found necessary, in a number of cases, through the revelations of the Committee on Un-American Activities.

We believe that the spotlight of pitiless publicity will serve as a deterrent to the spread of pernicious propaganda. We feel that our people are entitled to know the sources of any such efforts, and the person or persons or agencies carrying on such work in the United States.

Such propaganda is not prohibited under the proposed bill. The purpose of this bill is to make available to the American public the sources that promote and pay for the spreading of such foreign propaganda. Our National Food and Drug Act requires the proper labeling of various articles and safeguards the American public in the field of health. This bill seeks only to do the same thing in a different field, that of political propaganda. Propaganda efforts of such a nature are usually conducted in secrecy, which is essential to the success of these activities. The passage of this bill will force propaganda agents representing foreign agencies to come out in the open in their activities, or to subject themselves to the penalties provided in said bill.

This bill does not amend or repeal existing law.

Mr. Speaker, I shall be pleased to yield for questions if there are any.

Mr. Speaker, I move the previous question on the adoption of the conference report.

The previous question was ordered.

The conference report was agreed to, and a motion to reconsider was laid on the table.

CAMPAIGN EXPENDITURES

Mr. O'CONNOR of New York. Mr. Speaker, I call up House Resolution 291.

The Clerk read as follows:

Resolved, That a special committee of seven be appointed by the Speaker of the House of Representatives to investigate and report to the House not later than January 3, 1939, the campaign expenditures of the various candidates for the House of Representatives in both parties, or candidates of parties other than or independent of the Democratic or Republican Parties, the names of persons, firms, associations, or corporations subscribing, the amount contributed, the methods of collection and expenditures of such sums, and all facts in relation thereto, not only as to subscriptions of money and expenditures thereof but as to the use of any other means or influences, including the promise or use of patronage, and all other facts in relation thereto that would not only be of public interest but would aid the Congress in necessary legislation or in deciding any contests which might be instituted involving the right to a seat in the House of Representatives.

The investigation hereby provided for in all the respects above enumerated shall apply to candidates and contests before primaries, conventions, and the contests and campaigns of the general election in 1938, or any special election held prior to January 3, 1939. Said committee is hereby authorized to act upon its own initiative and upon such information which in its judgment may be reasonable and reliable. Upon complaint being made before such committee, under oath, by any person, persons, candidates, or political committee setting forth allegations as to facts which, under this resolution, it would be the duty of said committee to investigate, said committee shall investigate such charges as fully as though it were acting upon its own motion, unless, after hearings on such complaints, the committee shall find that such allegations in said complaints are immaterial or untrue.

That special committee or any subcommittee thereof is authorized to sit and act during the adjournment of the Congress, and that said committee or any subcommittee thereof is hereby empowered to sit and act at such time and place as it may deem necessary; to require by subpena or otherwise the attendance of witnesses, the production of books, papers, and documents; to employ stenographers at a cost of not exceeding 25 cents per hundred words. The chairman of the committee or any member thereof may administer oaths to witnesses. Subpenas for witnesses shall be issued under the signature of the chairman of the committee or subcommittee thereof. Every person who, having been summoned as a witness by authority of said committee or any subcommittee thereof, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the investigation heretofore authorized, shall be held to the penalties as prescribed by law.

Mr. O'CONNOR of New York. Mr. Speaker, this is the usual resolution introduced toward the end of each session, by whichever party is in the majority, to appoint a committee of the House to watch over elections for Representatives in Congress. It is in the usual form.

Mr. SNELL. Mr. Speaker, will the gentleman yield?

Mr. O'CONNOR of New York. I yield.

Mr. SNELL. As I glance through the resolution it seems to be in the usual form, but I notice it contains a provision that the committee shall make a report. Has that always been in these resolutions?

Mr. O'CONNOR of New York. I am quite sure it has. Whether they actually did report, I cannot say.

Mr. SNELL. It gives them the right to report.

Mr. O'CONNOR of New York. The committee should report, of course. All committees should report.

Mr. SNELL. As I remember, the average committee set up for this purpose investigates a situation when complaint is made to them. I wonder, in light of some of the developments that have taken place during the past few months, if this resolution should not be even broader than it is at the present time. As far as I know, the greatest influence that has been used to carry elections and influence the voters is propaganda and influence from various departments here in Washington, especially the W. P. A. Why should not the resolution be broadened to include the right to look into and investigate the activities of some of the governmental departments in connection with the primaries and also elections?

Mr. O'CONNOR of New York. Offhand, my opinion is that the resolution is broad enough to do that. Personally, I think it is broad enough to do it. I sincerely hope complaints made to the committee along this line will be investigated.

Mr. SNELL. It seems to me that is of special importance in the light of the developments that have taken place in the last 2 months here in Washington.

Mr. O'CONNOR of New York. I agree with the gentleman.

Mr. SNELL. I am glad the gentleman himself thinks the resolution is broad enough to include any of those cases that are especially called to the attention of the committee.

Mr. BOILEAU. Mr. Speaker, will the gentleman yield?

Mr. O'CONNOR of New York. I yield.

Mr. BOILEAU. The language of the resolution on page 1, line 5, reads:

> The campaign expenditures of the various candidates for the House of Representatives in both parties.

I suppose "both parties" means the Farmer-Labor Party and the Progressive Party. Then follows language stating:

> Or candidates of parties other than or independent of the Democratic or Republican Parties,

If the interpretation is placed on it that I think properly should be placed upon the phrase "both parties" that would exclude investigation of the Republican and Democratic Parties. Personally I believe there is a little more need to investigate these parties and more justification for investigation of these parties than any of the other parties. It seems to me the gentleman has gone a long way in using unnecessary language in this particular clause, because if the thought was to investigate candidates of all parties why does not the resolution read "of the various candidates for the House of Representatives"?

Mr. O'CONNOR of New York. I am not the author of this resolution.

Mr. BOILEAU. But it has been reported out by the gentleman's committee. I am not finding fault with the chairman of the Committee on Rules. I am just pointing out a custom that I think is prevalent here in the House to an unnecessary and undue degree of talking about "both parties." It is ridiculous. There are a lot of people out in the Middle West to whom "both parties" means only Farmer Labor Party and Progressive Party.

Does not the gentleman think the resolution ought to be amended to read "to investigate, and so forth, the campaign expenditures of the various candidates of the House of Representatives"?

Mr. O'CONNOR of New York. It says "both parties or." I did not think the Farmer-Labor Party ever used any money to elect its representatives.

Mr. BOILEAU. I want to bring out the interpretation I place upon it. The only ones who would be investigated would be the Farmer-Laborites and the Progressives. It is stated "or candidates of parties other than or independent of the Democratic or Republican Parties." That clause excludes the Republicans and Democrats.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, v. INTERNET RESEARCH AGENCY LLC, *et al.*, Defendants.	CRIMINAL NUMBER: 1:18-cr-00032-DLF

PROPOSED ORDER

Upon consideration of Defendant Concord Management and Consulting, LLC's Motion for a Supplemental Bill of Particulars, it is hereby **ORDERED** that the motion is **GRANTED**.

IT IS FURTHER ORDERED that the government shall provide a supplemental Bill of Particulars identifying which Defendant(s) were required to file under FECA and register under FARA and on behalf of whom.

SO ORDERED.

Dated: _____

_____
Dabney L. Friedrich
United States District Judge