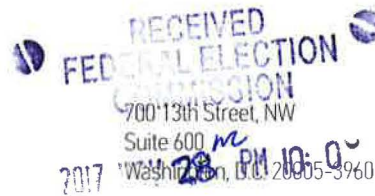


PERKINScoie

November 28, 2017



T +1.202.654.6200
F +1.202.654.6211
PerkinsCoie.com

Jeff S. Jordan
Office of General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

OFFICE OF GENERAL COUNSEL

Marc E. Elias
MElias@perkinscoie.com
D. +1.202.434.1609
F. +1.202.654.9126

Re: MUR 7284

Dear Mr. Jordan:

We write as counsel to American Bridge 21st Century Foundation (“AB Foundation” or “the Foundation”), American Bridge 21st Century PAC (“AB PAC” or “the PAC”) and Correct the Record PAC (“CTR”) (together, “Respondents”), in response to the complaint filed by Citizens Audit on October 10, 2017 (the “Complaint”). The Complaint fails to set forth sufficient facts which, if proven true, would constitute a violation of the Federal Election Campaign Act of 1971, as amended (“the Act”).

Legal Analysis

1. Transfers made pursuant to a common paymaster agreement do not constitute contributions or expenditures under the Act.

11 C.F.R. § 111.4 requires a valid complaint before the Federal Election Commission (the “FEC” or “Commission”) to contain “a clear and concise recitation of ... facts which describe a violation of a statute or regulation over which the Commission has jurisdiction.”¹ The Commission has jurisdiction to investigate and enforce violations of Federal campaign finance law.² The first three parts of the Complaint rely on the incorrect allegation that funds transferred to AB PAC by AB Foundation constitute political contributions or expenditures under the Federal Election Campaign Act of 1971 (the “Act”).³ These allegations fundamentally mischaracterize the nature of the relationship between AB Foundation and AB PAC, and the activities of each organization. The Complaint simply misunderstands the nature of shared costs and overhead between affiliated organizations.

As the Complaint correctly states, AB Foundation and AB PAC function under a common paymaster agreement.⁴ Certain staff members are employed by both the PAC and the Foundation; these employees’ salaries are paid by the PAC, and the Foundation

¹ 11 C.F.R. § 111.4

² 52 U.S.C. § 30109(a)(1).

³ See Complaint, ¶¶ 5-11.

⁴ Complaint ¶¶ 5-6, see also AB Foundation 2012 Form 990, Schedule O.

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reimburses the PAC for work done on behalf of the Foundation.⁵ The payments from the Foundation to the PAC are not contributions to the PAC to be used for the PAC's own political activities, nor are they necessarily for political activity at all. Instead, the payments are for the Foundation's own activities. Some of those are political in nature – as reported on the Foundation's Form 990 returns and, when appropriate, with filings made with the Commission – but, as is made clear on its Internal Revenue Service filings, most of the Foundation's activities are not political at all. The fact that it reimburses the PAC for shared costs does not change the nature of the activity the Foundation conducts.

The Complaint makes the unfounded allegation that funds transferred under the common paymaster agreement “do not appear to correlate to compensation payments,” are “disproportionately high,” and that the common paymaster agreement has led to “incorrect reporting of contributions from AB Foundation to AB Super PAC.”⁶ It alleges no specific facts that would give the Commission reason to believe that these payments were intended to influence Federal elections, rather than to reimburse the PAC for staff time attributable to the Foundation. Indeed, the allegation appears to be made up out of whole cloth. AB PAC has regularly and accurately reported the reimbursements it has received from the Foundation as part of the common paymaster agreement on its FEC Reports.⁷ Since all payments have been reported in compliance with the Act and with Commission regulations, the Complaint fails to establish a potential violation of FEC reporting requirements.

AB Foundation's involvement in the publication of “Trump Accountability” policy briefs in 2017 also does not support the allegation that it has been making political contributions to the PAC or is otherwise engaged in Federal election activity.⁸ As the Complaint correctly states, AB Foundation's mission is “to compare and contrast progressive and conservative solutions to America's public policy concerns and to educate the American people and the Nation's leaders on the result of that research.”⁹ Since the inauguration of President Trump, the Foundation has conducted extensive research and published briefs on a wide variety of policy issues relating to President Trump and his administration. These policy briefs are consistent with AB Foundation's mission to “educate the American people and the Nation's leaders” on “America's public policy concerns.”¹⁰

⁵ Though it is beyond the scope of the Commission's jurisdiction, this agreement is carried out in compliance with Internal Revenue Service Regulations. *See* 26 C.F.R. §§ 31.3121(s)-1, 31.3306(p)-1(a).

⁶ Complaint ¶¶ 8-11.

⁷ *See, e.g.* American Bridge 21st Century PAC, 2015 Mid-Year Form 3X, 2015 Year-End Form 3X, Amended, 2016 Mid-Year Form 3X, 2016 Year-End Form 3X, Amended, *available at* <https://www.fec.gov/data/committee/C00492140/?cycle=2016&tab=filings>.

⁸ Complaint ¶ 8.

⁹ AB Foundation 2015 IRS Form 990.

¹⁰ *See id.*

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That project does not include any activity that is regulated by the Commission or governed by the Act.

Similarly, none of the facts in the Complaint support the claim that the PAC is obligated to report donations made to the Foundation as political contributions. The Complaint alleges that “contributions earmarked or intended for AB Super PAC [were] made...to AB Foundation and then transferred by AB Foundation to AB Super PAC.”¹¹ According to Commission regulations, an earmarked contribution occurs when a contributor makes a “designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written,” which results in the contribution being “made to, or expended on behalf of, a clearly identified candidate or a candidate’s authorized committee.”¹² The Complaint cites no facts that would indicate that donors to the Foundation directed or believed that their donations were being made to influence elections for Federal office, rather than for the general use of the Foundation; and in fact, the Foundation does not accept donations earmarked for political activity or for transfer to political committees.

The allegation that the reimbursement for overhead and staff expenses to AB PAC qualifies AB Foundation as a political committee equally lacks merit. An organization must register as a political committee only if it has received contributions or made expenditures for federal election activity greater than \$1,000 and its “major purpose” is to engage in federal election campaign activity.¹³ As discussed above, the Foundation’s transfers to the PAC did not constitute political contributions or expenditures. Additionally, the Complaint does not credibly allege that the Foundation’s “major purpose” is federal campaign activity,¹⁴ and its Form 990 makes clear that its major purpose is nonpolitical in nature.

Finally, to the extent that the Complaint alleges violations of other federal laws, such as criminal fraud or Internal Revenue Service statutes and regulations,¹⁵ the Commission does not have jurisdiction to investigate these allegations.¹⁶ Complainant frequently, though incorrectly states that AB Foundation and AB PAC have “misused” the common paymaster agreement permitted by the IRS.¹⁷ Respondents have followed both the letter and spirit of the common paymaster agreement regulations, and the Federal Election Commission is not the appropriate forum to adjudicate these complaints.

¹¹ Complaint ¶ 5.

¹² 11 C.F.R. § 110.6.

¹³ 11 C.F.R. 100.5(a), Federal Election Commission, Explanation and Justification, Political Committee Status, 72 Fed. Reg. 5597, 5601 (Feb. 7, 2007) (citing *Buckley v. Valeo*, 424 U.S. 1, 79 (1976)).

¹⁴ Federal Election Commission, Explanation and Justification, Political Committee Status, 72 Fed. Reg. 5597 (Feb. 7, 2007).

¹⁵ See, e.g., Complaint ¶ 7, 9.

¹⁶ See 52 U.S.C. § 30109(a)(1).

¹⁷ Complaint ¶ 1, 5, 9, 11.

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2. Foundation assets that were transferred to the PAC as a common paymaster in 2015 and used for use for overhead and staff expenses in 2016 not reportable debts under the Act.

The Complaint misunderstands and mischaracterizes the financial reporting obligations and practices of AB Foundation and AB PAC. The Commission requires political committees like AB PAC to report all “debts and obligations” incurred, including any “loan, written contract, written promise or written agreement to make an expenditure.”¹⁸ While most debts must be reported within 60 days, “any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date.”¹⁹ The facts in the Complaint do not adequately allege that the PAC owed the Foundation any reportable debts at the end of 2015.

Part IX, Schedule D of the Foundation’s 2015 990 Form stated that there was \$610,800 “Due from American Bridge PAC” at the end of 2015.²⁰ This represented the Foundation’s accounting of funds it had paid to the PAC in 2015 which had not been used for staff and overhead expenses during that year. That amount was not a “debt” to be paid by AB PAC, but the amount of funds held by AB PAC to be used to pay AB Foundation payroll and overhead expenses. As the common paymaster for AB Foundation and AB PAC, AB PAC regularly accepts transfers of funds to pay the salaries of the two organizations’ shared staff, and the two organizations engage in ongoing accounting and reconciliation of these expenses.²¹

The Complaint has not alleged that AB Foundation requested repayment of these funds. No part of the Act or Commission regulation requires PACs to report surplus funds paid through a common paymaster arrangement as debts where there is no expectation or understanding that the funds have been loaned or will be repaid. Therefore, with regard to the failure to report a debt, the Complaint has failed to allege facts that, if true, would constitute a violation of any statute or rule under the Commission’s jurisdiction.²²

3. Correct the Record PAC paid fair market value for use of the Ready for Hillary email list; CTR was not required to report it as an in-kind contribution.

The Complaint alleges that Complainant has been “unable to discover any FEC report filed by [CTR] reporting receipt or use of the value of the email list” developed by Ready

¹⁸ 11 C.F.R. § 104.3(d).

¹⁹ *See id.* § 104.11(b).

²⁰ AB Foundation, 2015 990 Form, Part IX, Schedule D.

²¹ *See, e.g.*, American Bridge 21st Century PAC, 2015 Mid-Year Form 3X (amended Aug. 31, 2016), 2015 Year-End Form 3X (amended Aug. 31, 2016); 2016 April Quarterly Form 3X (April 15, 2016), available at <https://www.fec.gov/data/committee/C00492140/?cycle=2016&tab=filings>.

²² *See id.* § 111.4.

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for Hillary PAC. However, CTR reimbursed AB PAC, which had acquired the use of the list from AB Foundation, for the use of this list at the end of 2015. AB Foundation's IRS Form 990 shows that the Foundation paid Ready PAC \$150,000 for "list rental" in 2015.²³ As discussed above, the Foundation has been making regular payments to AB PAC as part of their common paymaster agreement, and the two organizations regularly engage in ongoing reconciliation based on the exchange of resources. The Foundation leased the list to the PAC, which accounted for its payment of the fair market value of the list through the ongoing reconciliation between the two organizations. Once AB PAC acquired rights to the list, it leased the list to CTR, which reimbursed AB PAC for the value of the list as part of a \$400,000 payment made at the end of 2015.²⁴ Since CTR paid fair market value for use of the list, it was not obligated to report it as an in-kind contribution.²⁵

The Commission may advance a complaint, finding "reason to believe," only if the complaint sets forth specific facts which, if proven true, would constitute a violation of the act. If those facts are not based on personal knowledge, they must be "accompanied by an identification of the source of information which gives rise to the complainants' belief in the truth of such statements."²⁶ Allegations based on speculation or "mere conjecture" cannot form the basis of a valid complaint.²⁷ The Complaint's final allegation, that CTR "may have failed to report independent expenditures with respect to the use of the email list,"²⁸ depends on mere conjecture about the content of the emails CTR sent. CTR followed all Commission regulations regarding the reporting of its political and non-political activity. Complainants' allegations to the contrary do not meet the Commission's standard for a valid complaint.

Conclusion

For the foregoing reasons, we respectfully request that the Commission dismiss this matter and take no further action.

²³ AB Foundation, 2015 990 Form, Part VII, Sec. B.

²⁴ See Correct the Record, 2015 Year-End Form 3X, Schedule B, available at <http://docquery.fec.gov/cgi-bin/fecimg/?201601319004983150>.

²⁵ See 11 C.F.R. § 100.52(d)(1).

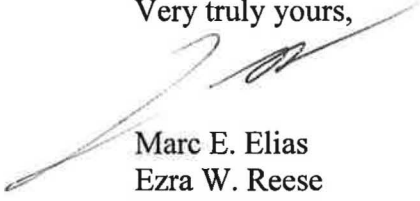
²⁶ *Id.* § 111.4(c).

²⁷ See FEC Matter Under Review 4850 (Deloitte & Touche LLP), Statement of Reasons of Chairman Wold and Commissioners Mason and Thomas at 1-2 (July 20, 2000).

²⁸ Complaint ¶ 15.

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Very truly yours,

A handwritten signature in black ink, appearing to be "Marc E. Elias", written over a horizontal line.

Marc E. Elias
Ezra W. Reese
Elizabeth P. Poston
Counsel to Respondents