

1 **FEDERAL ELECTION COMMISSION**

2 **FIRST GENERAL COUNSEL'S REPORT**

3
4 **MUR 7284**

5 COMPLAINT FILED: October 10, 2017

6 NOTIFICATION: October 12, 2017

7 LAST RESPONSE: November 28, 2017

8 ACTIVATED: January 2, 2018

9
10 ELECTION CYCLE: 2012 - 2018

11 EARLIEST SOL: May 23, 2016

12 LATEST SOL: December 30, 2022

13
14 **COMPLAINANT:**

The Citizens Audit, LLC

15 **RESPONDENTS:**

16 American Bridge 21st Century and Rodell
17 Mollineau in his official capacity as treasurer
18 American Bridge 21st Century Foundation
19 Correct the Record and Elizabeth Cohen in her
20 official capacity as treasurer
21 Ready PAC and Amy Wills Gray in her official
22 capacity as treasurer

23 **RELEVANT STATUTES
24 AND REGULATIONS:**

25 52 U.S.C. § 30102
26 52 U.S.C. § 30103
27 52 U.S.C. § 30104(a), (b)
28 52 U.S.C. § 30116(a)(8)
29 11 C.F.R. § 104.3(a), (b)
30 11 C.F.R. § 104.11(a), (b)
31 11 C.F.R. § 110.6

32 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

33 **FEDERAL AGENCIES CHECKED:**

Internal Revenue Service public filings

34
35
36 **I. INTRODUCTION**

37
38 The Complaint makes reporting and registration allegations as to three related entities:
39 independent expenditure-only political committee American Bridge 21st Century ("AB PAC");
40 section 501(c)(4) non-profit American Bridge 21st Century Foundation ("AB Foundation")
41 (collectively the "AB Respondents"); and hybrid political committee Correct the Record. The

1 allegation against Correct the Record also concerns unrelated hybrid political committee Ready
2 PAC.

3 The Complaint broadly alleges that AB PAC misreported receipts from AB Foundation
4 as reimbursement of overhead and staff expenses when they were actually contributions from
5 AB Foundation and from donors to AB Foundation who earmarked those funds to fund AB PAC.
6 The Complaint also alleges that, through its disguised contributions to AB PAC, AB Foundation
7 engaged in sufficient political activity to trigger political committee status. The Complaint
8 further alleges that AB PAC failed to properly report various specific transactions, including its
9 debts to AB Foundation. Finally, the Complaint alleges that Correct the Record received an
10 email list from Ready PAC but did not report the receipt or use of the list to the Commission.

11 As set forth below, we recommend that the Commission find no reason to believe as to
12 the broader allegations, but find reason to believe as to some more specific allegations. We
13 recommend that the Commission find that AB PAC and AB Foundation violated the Federal
14 Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by failing
15 to report earmarked contributions; find reason to believe that AB PAC and Rodell Mollineau, in
16 his official capacity as treasurer, and Correct the Record and Elizabeth Cohen, in her official
17 capacity as treasurer, violated the reporting requirements of the Act in the manner in which they
18 reported "reconciled" transactions with other entities; find no reason to believe that Ready PAC
19 violated the reporting requirements of the Act by failing to report the rental of its email list to
20 Correct the Record; and find no reason to believe that AB Foundation violated the Act by failing
21 to organize, register, and report as a political committee. We also recommend that the
22 Commission authorize compulsory process for use, if necessary, in an investigation to determine
23 the scope of AB PAC's and Correct the Record's reporting violations.

1 **II. FACTUAL BACKGROUND**

2 **A. The Respondents**

3 AB PAC, AB Foundation, and Correct the Record are separate entities that share an
4 address.¹

5 AB PAC is an independent expenditure-only political committee that is registered with
6 the Commission.² It describes itself as a progressive research and communications organization
7 that is committed to “holding Republicans accountable for their words and actions.”³ AB PAC
8 made \$19,724,726 in disbursements during the 2016 election cycle⁴ and, in December 2016,
9 announced a new project it described as focused on ensuring that Donald Trump’s administration
10 would be held accountable (the “Trump Accountability Project”).⁵

11 AB Foundation is registered with the IRS as a 501(c)(4) nonprofit organization that
12 describes its mission as being “to compare and contrast progressive and conservative solutions to
13 America’s public policy concerns and to educate the American people and the nation’s leaders
14 on the results of that research.”⁶ In 2017, AB Foundation published “Trump Accountability”

¹ Compl. at 4.

² See AB 21st Century Statement of Organization (Jan. 31, 2011).

³ *American Bridge 21st Century (Who We Are)*, <https://ab21.wpengine.com/about/> (last visited May 7, 2018).

⁴ See American Bridge 21st Century Amended 2016 Year-End Report at 2 (June 15, 2016); American Bridge 21st Century Amended 2015 Year-End Report at 2 (Aug. 31, 2016).

⁵ *David Brock Announces American Bridge Trump Administration Accountability War Room*, <https://americanbridgepac.org/tag/trump-accountability/> (last visited May 7, 2018).

⁶ See Compl., Ex. A. at 2.

1 policy briefs that the Complaint characterizes as political activity related to AB PAC's Trump
2 Accountability Project.⁷

3 Correct the Record operates as a hybrid political committee and is registered with the
4 Commission.⁸ According to the Complaint, Correct the Record was a project of AB PAC before
5 it registered as a political committee in 2015.⁹

6 Ready PAC operates as a hybrid political committee and is registered with the
7 Commission.¹⁰ The Complaint does not allege that Ready PAC is related to the other
8 Respondents.

9 **B. AB Respondents' Financial Transactions & the Common Paymaster**
10 **Arrangement**

11 From 2011 to 2018, AB PAC reported 116 receipts from AB Foundation that total
12 approximately \$15.6 million.¹¹ All of these receipts were reported on line 12 of AB PAC's
13 reports (as "offsets to operating expenditures"), most for the reported purpose of "Overhead &
14 Staff Expenses" and some for "Overhead Expenses."¹² AB PAC also reported debts and
15

⁷ See *id.* at 10, 12.

⁸ See Correct the Record Amended Statement of Organization (June 5, 2017).

⁹ Compl. at 4.

¹⁰ See Ready PAC Statement of Organization (Jan. 23, 2013). Ready PAC previously went by the name "Ready for Hillary PAC." See *id.* Ready PAC did not respond to the Complaint.

¹¹ These totals were calculated by exporting data, from the Commission's online database, on AB PAC's receipts from 2011 through the 2018 year-end report. Of these 116 receipts, 29 were receipts from AB Foundation (totaling \$4,534,000) post-dating June 30, 2017, the close of books of AB PAC's last publicly available report preceding the filing of the Complaint on October 10, 2017.

¹² The memo entries for all but eight of the receipts state the receipts are for "Overhead and Staff Expenses," but do not otherwise itemize the portion of each receipt that is going to each expense. Six receipts from the 2013-14 reporting period contain blank memo entries, and two receipts from the 2011-12 reporting period contain memo entries that indicate they are for "Overhead Expenses."

1 obligations owed to AB Foundation for “Overhead & Staff Expenses” or “Overhead Expenses”
2 in 2011, 2013, and 2014.¹³

3 The Complaint asserts that, starting in 2014, the AB Foundation payments that AB PAC
4 reported as offsets to operating expenditures were disproportionately high and represent an effort
5 to hide AB Foundation’s contributions to and work for AB PAC.¹⁴

6 **1. The “Common Paymaster” Arrangement**

7 The Complaint makes a number of interrelated allegations of wrongdoing related to the
8 funds transferred from AB Foundation to AB PAC.¹⁵ Under the common paymaster provisions
9 in the Internal Revenue Code, two or more “related” entities, like the AB Respondents, may
10 employ the same individuals at the same time and pay these individuals through only one of the
11 entities (the “common paymaster”), which is considered, for federal tax purposes, to be a single
12 employer.¹⁶ By using a common paymaster arrangement, related entities pay, in total, no more
13 social security tax than a single employer would pay.¹⁷ Each entity must pay its own part of the

¹³ See, e.g., American Bridge 21st Century Amended 2014 Pre-General Report at 79 (Aug. 1, 2015); American Bridge 21st Century Amended 2014 July Quarterly Report at 428, 429 (July 31, 2015); American Bridge 21st Century 2013 Year End Report at 538 (Jan. 31, 2014); American Bridge 21st Century Amended 2011 Mid-Year Report at 75 (May 24, 2012).

¹⁴ Compl. at 9. The Complaint does not suggest, or allege facts to support, that AB Foundation is a connected organization of AB PAC, or, conversely, that AB PAC should be considered a separate segregated fund of AB Foundation. See 52 U.S.C. § 30118(b)(2)(C) (exempting from definition of “contribution” those payments by connected organization for SSF’s administrative costs); 11 C.F.R. § 114.1(a)(2)(iii) (same).

¹⁵ Compl. at 5-12.

¹⁶ Internal Revenue Serv., U.S. DEPT. OF THE TREASURY, Pub. No. 15-A, Employer’s Supplemental Tax Guide at 22 (Feb. 21, 2018), <https://www.irs.gov/pub/irs-pdf/p15a.pdf> (“Employer’s Tax Guide”).

¹⁷ *Id.*; see also Internal Revenue Serv., *Common Paymaster* (Feb. 1, 2018), available at <https://www.irs.gov/government-entities/common-paymaster> (last visited Apr. 25, 2018) (“Common Paymaster Guide”) (explaining basic aspects of common paymaster arrangements, including when corporations are considered “related” and how common paymaster arrangement allows related corporations to avoid paying inflated taxes on wages that, if cumulated across related employers paying separately, might exceed FICA and FUTA wage caps).

1 employment taxes and may deduct only its own part of the wages.¹⁸ The common paymaster is
2 responsible for filing information and tax returns, issuing W-2 forms, and cutting the paychecks
3 to the employees, while the other entity transfers its share of the employee expenses to the
4 common paymaster.¹⁹ The Complaint asserts that AB PAC's reported receipts from AB
5 Foundation for "Overhead and Staff" were disproportionate to the relative share of the
6 organizations' respective activities and an improper use of the common paymaster
7 arrangement.²⁰

8 AB PAC, as the common paymaster, disbursed salaries to the common staff.²¹ AB
9 Foundation either prospectively forwarded or retroactively reimbursed funds to AB PAC for the
10 work done on behalf of the foundation.²² The AB Respondents indicate that at least some
11 portion of AB Foundation's transfers to AB PAC were for overhead expenses in addition to staff
12 expenses incurred by AB Foundation under the common paymaster arrangement.²³

13 The record does not indicate which of AB PAC's reported disbursements are payments,
14 in whole or in part, for the shared employees' work for AB Foundation under the common

¹⁸ Internal Revenue Serv., Employer's Tax Guide at 22.

¹⁹ *See id.*; Internal Revenue Serv., Common Paymaster Guide (explaining transfers between related entities utilizing common paymaster arrangement).

²⁰ Compl. at 9. The AB Respondents' compliance with IRS requirements is outside the Commission's jurisdiction and not analyzed in this report.

²¹ *See* Response of AB 21st Century, AB 21st Century Foundation, and Correct the Record ("Joint Resp.") at 1-2 (Nov. 29, 2017).

²² *See id.* at 1-2 (stating that AB PAC pays the salaries under the common paymaster arrangement and AB Foundation reimburses AB PAC for staff work for AB Foundation); *id.* at 4 (describing funds AB Foundation paid AB PAC in 2015 which had not been used by the end of the year and were "held by AB PAC to be used to pay AB Foundation payroll and overhead expenses").

²³ *See id.* at 4-5 (describing transfers for overhead expenses and the AB Respondents' "ongoing reconciliation based on the exchange of resources").

1 paymaster arrangement. The record also does not indicate what portion of the overhead, staff, or
2 other offsets to operating expenses that AB PAC reported receiving from AB Foundation are
3 receipts for AB Foundation's salary obligations under the common paymaster arrangement and
4 which portion are receipts for other purposes. Additionally, the record does not break down how
5 much AB PAC paid to its own, as opposed to AB Foundation's, employees because AB PAC's
6 reported disbursements for "salary," "payroll," and related expenses do not differentiate between
7 entities.

8 The Complaint makes a number of interrelated allegations of wrongdoing related to the
9 transfers from AB Foundation to AB PAC that are discussed in the analysis below.

10 **2. AB PAC's Debt Obligation to AB Foundation**

11 The Complaint also alleges that AB PAC failed to report to the Commission a \$610,800
12 debt that it owed AB Foundation in 2015; the Complaint presents this allegation as separate from
13 the common paymaster arrangement.²⁴ As support for the allegation, the Complaint cites to a
14 Form 990 that AB Foundation filed with the IRS in 2015; the form reported that \$610,800 was
15 "Due from American Bridge PAC."²⁵

16 The Response disputes that the amount that AB Foundation reported on its Form 990 was
17 a "debt," explaining that the amount was not a traditional "debt and obligation" that had to be
18 reported to the Commission, but instead was a transfer under the common paymaster
19 arrangement that "represented the Foundation's accounting of funds it had paid to the PAC in
20 2015 which had not been used for staff and overhead expenses during the year."²⁶

²⁴ Compl. at 13.

²⁵ *Id.*, Ex. A at 25.

²⁶ Joint Resp. at 4.

1 **C. Correct the Record's Email List Rental**

2 Finally, the Complaint alleges that Correct the Record failed to report the receipt or use
3 of an email list that it received in late 2015 from Ready PAC.²⁷ In support of this allegation, the
4 Complaint cites a December 2015 email posted on Wikileaks that references Correct the
5 Record's "emails to the larger Ready for Hillary list."²⁸

6 Though the Complaint presents this allegation as separate from the financial transactions
7 between the AB Respondents, the Response asserts that the list rental involved a series of
8 transactions between all of the Respondents. The Response states that AB Foundation first
9 leased the email list from Ready PAC for \$150,000.²⁹ Ready PAC reported receiving \$150,000
10 from "American Bridge 21st Century" on May 6, 2015 in exchange for the email list.³⁰ The
11 Response states that AB PAC leased the email list from AB Foundation at the end of 2015, and
12 that AB PAC "accounted for its payment of the fair market value of the list through the ongoing
13 reconciliation" between the AB Respondents.³¹ AB PAC does not appear to have specifically
14 described list rental as a purpose of any reported disbursement to or receipt from AB Foundation.
15 The Response further states that AB PAC then leased the list to Correct the Record, which
16 "reimbursed AB PAC for the value of the list as part of a \$400,000 payment made at the end of

²⁷ Compl. at 13-14.

²⁸ *Id.*; see also Ready PAC Amended Statement of Organization (Apr. 12, 2015) (changing name, eight months prior to the leaked email's date, from "Ready for Hillary PAC" to "Ready PAC").

²⁹ Joint. Resp. at 4-5 (noting that AB Foundation reported the list rental from Ready PAC in a 2015 IRS filing).

³⁰ Ready PAC 2015 Mid-Year Report at 23 (July 23, 2015).

³¹ Joint Resp. at 5.

1 2015.”³² Both AB PAC and Correct the Record reported this \$400,000 payment, but neither
2 report stated that the payment was for the email list rental.³³

3 **III. ANALYSIS**

4 **A. Allegations Concerning the AB Respondents' Transactions**

5 Political committees such as AB PAC must comply with certain organizational and
6 reporting requirements set forth in the Act. Among other requirements, a political committee
7 must register with the Commission, appoint a treasurer who maintains its records, and file
8 periodic reports for disclosure to the public.³⁴ The periodic disclosure reports committees file
9 with the Commission must disclose all receipts they receive and disbursements they make.³⁵
10 These reports must itemize all contributions received from contributors that aggregate in excess
11 of \$200 per election cycle and must itemize each reportable disbursement with the date, amount,
12 and purpose of the disbursement.³⁶ Political committees must also disclose debts or obligations
13 exceeding \$500 in the report that covers the date in which the debt was incurred and
14 continuously report debts until they are extinguished.³⁷

³² *Id.*

³³ See American Bridge 21st Century Amended 2015 Year-End Report at 17 (Aug. 31, 2016) (reporting a \$400,000 receipt from Correct the Record); Correct the Record 2015 Year-End Report at 41 (Jan. 31, 2016) (reporting a \$400,000 disbursement to AB PAC with a purpose of “Contribution: Non-contribution Account”).

³⁴ See 52 U.S.C. §§ 30102-30104.

³⁵ 52 U.S.C. § 30104(a), (b); 11 C.F.R. § 104.3(a), (b).

³⁶ 52 U.S.C. § 30104(b); 11 C.F.R. §§ 104.3(a)(4), (b)(3); see also 11 C.F.R. § 104.3(b)(3)(i)B (explaining the specificity required in reporting purposes of disbursements and noting that “statements or descriptions such as *advance, ... other expenses, expenses, expense reimbursement, miscellaneous, outside services ...* would not meet the requirements”) (emphasis in original).

³⁷ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.11(a), (b).

1 **1. There is No Basis to Conclude AB PAC Generally Misreported**
2 **Common Paymaster Transactions**

3
4 The Complaint alleges that AB PAC's improper use of the common paymaster
5 arrangement resulted in "any number of" reporting violations in the way it reported the transfers
6 from AB Foundation, including that AB PAC should have reported the receipts from AB
7 Foundation as contributions rather than as offsets to operating expenditures. The AB
8 Respondents state that all payments from AB Foundation to AB PAC were payments for AB
9 Foundation's own activities and were not contributions to be used for AB PAC's activity (or any
10 political activity); the Response states that AB Foundation's reimbursements to AB PAC for
11 common employees' work complied with IRS regulations and that AB PAC accurately reported
12 all reimbursements.³⁸

13 As a preliminary matter, this report addresses the allegation that AB PAC's reporting of
14 transactions made pursuant to a common paymaster arrangement could, itself, result in reporting
15 violations. Neither the Act nor Commission regulations expressly addresses how a political
16 committee should report receipts, disbursements, or debt obligations relating to a common
17 paymaster agreement as described above. Nonetheless, the Commission has provided guidance
18 to different types of political committees about the variety of methods available to share or
19 allocate costs – such as use of advances or reimbursements for the expenses of staff shared with
20 other entities – and the various methods available for reporting such costs, including through
21 reporting reimbursements for shared costs as offsets to operating expenditures.³⁹ Based on this

³⁸ *See* Joint Resp. at 1-3.

³⁹ *See, e.g.*, Advisory Op. 1995-22 (DCCC) at 3 (approving of a particular method of reporting shared employee costs in which one entity reimburses another, while also noting that the approved method "is not the only permissible method" and noting that, "normally," committees would report such reimbursements as "offsets to operating expenditures" like refunds); Advisory Op. 1980-38 (Allen) at 2 (concluding that political committee may receive from non-committee reimbursement payments for shared costs, which should be reported as offsets to

1 guidance and the information available, we conclude that a common paymaster arrangement
2 under which AB PAC paid shared employees' salary on behalf of both of the AB Respondents;
3 received reimbursements from AB Foundation for the share of employee costs attributable to
4 those employees' work for AB Foundation; reported the salary payments made by AB PAC for
5 shared employees' work for both AB Respondents as disbursements on its regularly scheduled
6 reports; and reported reimbursements from AB Foundation for the share of employee costs
7 attributable to those employees' work for AB Foundation as offsets to operating expenditures is
8 generally permissible and does not, in itself, give rise to unspecified reporting violations.

9 *Inaccurate* reporting of, or failure to report, transactions made pursuant to a common
10 paymaster arrangement would be a violation, however, for the reason that committees must
11 accurately report their activity.⁴⁰ Allegations regarding inaccurate reporting by the AB
12 Respondents are addressed in Sections A.2 and A.3 below.

13 **2. There is No Reason to Believe AB PAC Misreported "Disguised"**
14 **Contributions from AB Foundation**
15

16 The Complaint alleges that AB Foundation disguised contributions through transfers to
17 AB PAC under the common paymaster arrangement.⁴¹ The Complaint alleges that the amount
18 of the reimbursements by AB Foundation exceeded its share of the costs and, therefore,

operating expenditures); Advisory Op. 1978-67 (Anderson) (superseded in part by AO 1980-38 on other grounds) (concluding that Act and Commission regulations do not prohibit shared use of facilities so long as costs are allocated appropriately and committee reports its own expenditures); *see also* 11 C.F.R. § 106.1 (setting out allocation rules); Advisory Op. 1988-24 (Dellums) (approving joint operations account pursuant to joint fundraising agreement between federal- and non-federal committees sharing operational costs, including common staff).

⁴⁰ 52 U.S.C. § 30104(a), (b); 11 C.F.R. § 104.3(a), (b).

⁴¹ Compl. at 5.

1 constituted contributions to AB PAC.⁴² The Complaint also alleges that AB PAC misreported
2 receipts as transfers when they were, in fact, earmarked contributions forwarded by unnamed
3 conduits.

4 In support of the allegation that AB Foundation made direct contributions to AB PAC,
5 the Complaint argues that AB Foundation paid a “disproportionate” share of employee expenses
6 for the common employees under the common paymaster arrangement and that, therefore, the
7 payments above AB Foundation’s own costs were contributions. For example, according to the
8 Complainant’s analysis, AB Foundation allegedly paid approximately 73% of the AB
9 Respondents’ employee expenses in 2017 even though most of the common employees’ work
10 was related to AB PAC’s Trump Accountability Project.⁴³ The Complaint specifically notes that
11 AB PAC’s reports show that AB Foundation transferred \$2,800,000 to AB PAC during the
12 January 1 – June 30, 2017, reporting period and AB PAC disbursed only \$2,800,838 in employee
13 compensation payments during the same period; the Complaint assumes that the AB Foundation
14 transfers were all for common employee expenses and thus concludes that AB PAC paid only
15 \$838 of expenses for costs it incurred in that period by shared employees.⁴⁴

16 The AB Respondents assert that AB Foundation employees’ work on “Trump
17 Accountability” policy briefs was non-political policy and issue research in order to publish

⁴² See Advisory Op. 2004-37 (Waters) at 4 (concluding that “mere reimbursement of . . . costs . . . would not constitute ‘anything of value,’” unless the reimbursement “exceeds the costs”); *see also* 11 C.F.R. § 100.52 (definition of “contribution”).

⁴³ *Id.* at 11-12.

⁴⁴ *Id.* at 7-8.

1 briefs to educate people about public policy concerns and otherwise characterizes the
2 Complainant's allegations as being without merit.⁴⁵

3 While the Complaint alleges that some of AB Foundation's transfers to AB PAC were
4 "disproportionately high" and, thus, actually contributions to the PAC, the available information
5 provides no evidence that would support a reasonable inference that AB Foundation was making
6 contributions to AB PAC rather than paying its share of expenses handled under the common
7 paymaster arrangement. The Complaint speculates about the relative employee-related costs of
8 the AB Respondents, but provides no evidence that AB Foundation paid shared employees for
9 their work on AB PAC activity, except by further speculation that AB Foundation employees'
10 work on "Trump Accountability" reports was "substantially" for an AB PAC project. Given the
11 lack of specific allegations in the Complaint, and the AB Respondents' assertion that AB
12 Foundation employees produced non-political policy briefs and issue research about public
13 policy concerns, the available information provides no reasonable basis for concluding that AB
14 Foundation reimbursed AB PAC in excess of its own portion of the shared employees' costs
15 such that AB PAC failed to report contributions from AB Foundation. Nonetheless, as described
16 further below, AB PAC may have inaccurately reported transactions with AB Foundation for
17 shared employee costs via undifferentiated "reconciliations" that obscured both the amounts and
18 dates of those costs.

19 In support of the earmarked contribution allegation, the Complaint notes that AB
20 Foundation's transfers to AB PAC "sometimes closely correlated with and sometimes were

⁴⁵ Joint Resp. at 3.

1 identical to the amounts of donations received by AB Foundation.”⁴⁶ The Complaint does not
2 identify specific donations to AB Foundation that so correlate, cite any sources addressing those
3 purported donors’ intent to contribute to AB PAC, or offer any information regarding AB
4 Foundation’s exercise of direction or control over any alleged earmarked contributions. The
5 Response denies that any donations made to AB Foundation were earmarked contributions for
6 AB PAC.⁴⁷

7 For the purposes of the monetary limits of the Act, “all contributions made by a person,
8 either directly or indirectly, on behalf of a particular candidate, including contributions which are
9 in any way earmarked or otherwise directed through an intermediary or conduit to such
10 candidate, shall be treated as contributions from such person to such candidate.”⁴⁸ Commission
11 regulations define the term “earmarked” as “a designation, instruction, or encumbrance, whether
12 direct or indirect, express or implied, oral or written, which results in all or any part of a
13 contribution or expenditure being made to, or expended on behalf of, a clearly identified
14 candidate or a candidate’s authorized committee.”⁴⁹ The intermediary must report the original
15 source and the intended recipient of an earmarked contribution to both the Commission and the
16 intended recipient; the recipient of the earmarked contribution must report it as well.⁵⁰

⁴⁶ Compl. at 11.

⁴⁷ Joint Resp. at 3.

⁴⁸ *See* 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6.

⁴⁹ 11 C.F.R. § 110.6(b)(1).

⁵⁰ *See* 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(c) (requiring the intermediary committee to report the original source of the contribution and the recipient candidate, and for recipient committees to disclose each intermediary forwarding contributions exceeding \$200 in an election cycle).

1 Even assuming that the earmark provisions of the Act and Commission regulations apply
2 to an independent expenditure-only political committee's receipt of contributions, we note that
3 the Commission has declined to investigate allegations of earmarking absent "clear documented
4 evidence" that contributors provided instructions to the recipient committee.⁵¹ The Commission
5 has declined to find reason to believe in prior matters where the complaints provided no
6 information beyond alleged similarities in contribution amounts and timing, or where credible
7 information suggested that the contributions were not earmarked.⁵²

8 While the Complaint alleges that AB Foundation received donations earmarked for AB
9 PAC's political activity and masked those earmarked funds when passing them on to AB PAC
10 under the common paymaster arrangement, it does not identify specific donations to AB
11 Foundation that were earmarked for AB PAC or provide a basis for believing those donations
12 were so earmarked. Instead, the Complaint makes general allegations without identifying any
13 particular contributions to AB PAC that were purportedly earmarked or any explicit indicia of
14 earmarking attributable to such contributions. Thus, there is no evidence in the record to support
15 a finding that AB Foundation failed to report, as an intermediary, earmarked contributions to AB

⁵¹ See Factual & Legal Analysis at 6, MUR 5732 (Matt Brown for Senate, *et al.*) ("F&LA") (citing MUR 4831/5274 (Nixon Campaign Fund, *et al.*)); see also Statement of Reasons, Comm'rs Smith & Toner at 2, MUR 4831/5274 (Nixon Campaign Fund, *et al.*) (finding "explicit indicia of earmarking by contributors, in the form of memo line annotations, letters accompanying the contributions, and checks for the Nixon Campaign Fund"); First Gen. Counsel's Report at 6-7, MUR 7251 (Loudermilk for Cong., *et al.*) ("FGCR") (recommending against finding an earmarking violation on the basis of the timing and amount of contribution without additional information); FGCR at 4-9, MUR 7246 (Buddy Carter for Cong.) (issuing the same recommendation).

⁵² See Zeldin for Senate F&LA at 6-7, MUR 6985 (Lee Zeldin, *et al.*) (finding no reason to believe where alleged reciprocal contributions were not closely linked in timing and amount, respondents denied the allegations, and there was no information indicating that any of the contributions were earmarked or encumbered by "express or implied instructions to the recipient committees"); see also Matt Brown for U.S. Senate F&LA at 5-8, MUR 5732 (Matt Brown for U.S. Senate, *et al.*); FGCR at 6-9, MUR 5520 (Billy Tauzin Cong. Comm., *et al.*) (finding no reason to believe earmarking violation occurred on record showing "winking and nods, but no deals"); FGCR at 14-16, MUR 5445 (Geoffrey Davis for Cong.); FGCR at 8-9, MUR 5125 (Paul Perry for Cong., *et al.*); and FGCR at 20-21, MUR 4643 (Democratic Party of New Mexico, *et al.*).

1 PAC, or that AB PAC failed to report earmarked contributions it received. As such, we
2 recommend that the Commission find no reason to believe that AB PAC and Rodell Mollineau,
3 in his official capacity as treasurer, violated 11 C.F.R. § 110.6(c) or that AB Foundation violated
4 52 U.S.C. § 30116(a)(8) or 11 C.F.R. § 110.6(c).

5 **3. There is Reason to Believe that AB PAC Misreported Debt, List**
6 **Rental, and Other Possible Receipts or Disbursements within**
7 **“Reconciliation” Transactions**
8

9 While the available information does not support the Complaint's allegations that the AB
10 Respondents disguised contributions under AB PAC's reporting of common paymaster
11 transactions, the available information does show at least two instances in which AB PAC failed
12 to file accurate reports as a result of what the Response calls the “ongoing reconciliation”
13 between the AB Respondents. First, in response to the Complaint's allegation that Correct the
14 Record failed to report a valuable email list that it received in 2015, the Response states that
15 Correct the Record leased that email list from AB PAC, which itself leased the list from AB
16 Foundation.⁵³ AB PAC's unpaid receipt of the email list from AB Foundation would be
17 considered an in-kind contribution.⁵⁴ The Commission, however, has determined that a mailing
18 list can be leased, without a contribution resulting, if (1) it has an ascertainable fair market value
19 and (2) it is leased at the usual and normal charge in a “bona fide, arm's length transaction and
20 the list [is] used in a commercially reasonable manner consistent with such an arms-length
21 agreement.”⁵⁵ A review of AB PAC's Commission filings shows that AB PAC failed to report

⁵³ Joint Resp. at 5.

⁵⁴ 11 C.F.R. 100.52(d).

⁵⁵ Advisory Op. 2002-14 (Libertarian National Committee) at 4; *see also* Advisory Op. 2006-34 (Working Assets, Inc.) at 5.

1 either an in-kind contribution from AB Foundation for the email list or a disbursement to AB
2 Foundation reflecting a fair market-value payment for the list. Although the Response indicates
3 that AB PAC “accounted for its payment of the fair market value of the list through the ongoing
4 reconciliation” with AB Foundation,⁵⁶ “list rental” is not fairly included within AB PAC’s
5 reported disbursements for “salary” or “payroll” and receipts for “Overhead & Staff Expenses”
6 or “Overhead Expenses” from AB Foundation.⁵⁷ Because the purported payment was not
7 individually disclosed, the transaction is not evident on the face of AB PAC’s reports, and we are
8 unable to determine whether AB PAC paid fair market value for the email list. Thus, the
9 available information indicates that AB PAC violated the Act’s reporting requirements in
10 connection with reporting its receipt of and purported payment for the email list from AB
11 Foundation sometime in late 2015.

12 Second, the available information shows that AB PAC failed to report the \$610,800
13 worth of services that AB PAC owed to AB Foundation during 2016 due to AB Foundation’s
14 advance payment for payroll expenses in 2015.⁵⁸ In past matters, the Commission has
15 determined that committees must disclose funds advanced to it.⁵⁹ In Advisory Opinion 1992-1
16 (Faulkner for Senate), a candidate inquired, among other things, whether his candidate

⁵⁶ Joint Resp. at 5.

⁵⁷ See, e.g., 11 C.F.R. § 104.8 (setting out rules for uniform reporting of receipts); 11 C.F.R. § 104.9 (same, for disbursements); Instructions for FEC Form 3X and Related Schedules at 13 (distinguishing disbursement purpose of “Administrative/Salary/Overhead Expenses” from that for “Solicitation and Fundraising Expenses,” which includes costs for “mailing lists” and “call lists”).

⁵⁸ See Joint Resp. at 4; AB 21st Century April 2016 Quarterly Report at 659 (Apr. 15, 2016).

⁵⁹ See, e.g., Factual and Legal Analysis at 8-11, MUR 6509 (Friends of Herman Cain) (finding reason to believe the Cain Committee failed to report funds advanced to it by 501(c)(3) non-profit corporation); Factual and Legal Analysis at 5; MUR 4369 (Friends of Jim Inhofe) (finding reason to believe committee failed to report in-kind advances from candidate).

1 committee could reimburse him for campaign related expenses that he had paid with his personal
2 funds.⁶⁰ The Commission responded affirmatively, but explained that the committee should
3 report advances of personal funds for campaign expenses.⁶¹ The Commission specified that
4 advances should be shown as memo entries on Schedule A in order to avoid inflating total
5 reported contributions.⁶² In addition, if a reimbursement was not made in the same reporting
6 period as the original advance, the Commission noted that the committee must also itemize the
7 advance as a debt on Schedule D.⁶³

8 The Response asserts the advance payment of employee expenses was not a true debt
9 under the Act because the regulations state that “any obligation incurred for rent, salary, or other
10 regularly reoccurring administrative expense shall not be reported as a debt before the payment
11 due date.”⁶⁴ The Explanation and Justification for that provision explained that “periodic
12 administrative costs incurred for rent and staff salaries need not be reported as debts if payment
13 is not due before the end of the reporting period.”⁶⁵ The \$610,800 advance payment here is not,
14 however, an administrative cost *of the PAC*, but is instead an advance that was seemingly made
15 for the *Foundation’s* future share of administrative costs, and represented an amount that was
16 owed to AB Foundation as soon as the payment was made. Thus, given the floating of this

⁶⁰ Advisory Op. 1992-1.

⁶¹ *Id.* at 2.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ 11 C.F.R. § 104.11(b).

⁶⁵ Debts Owed by Candidates and Political Committees, Final Rules, 55 Fed. Reg. 26,378, 26,385 (June 27, 1989).

1 payment over several reporting periods, AB PAC failed to report that amount as a debt or
2 obligation.⁶⁶

3 Based on the two discrete reporting violations identified above, we recommend that the
4 Commission find reason to believe that American Bridge 21st Century and Rodell Mollineau, in
5 his official capacity as treasurer, violated 52 U.S.C. § 30104(b).

6 Moreover, these discrete reporting violations, both of which concern the AB
7 Respondents' "ongoing reconciliation" of funds, support an inference that AB PAC may have
8 made similar reporting violations via its undifferentiated "reconciliations" with AB Foundation.
9 For example, the available information shows that in 2017, AB PAC's reported payroll expenses
10 increased slightly, compared to the two previous years, yet AB PAC received \$3,809,000 more
11 from AB Foundation that year for purported overhead and salary expenses than it had received in
12 2016.⁶⁷ There is a reasonable inference that this unexplained jump in AB PAC's reported
13 receipts from AB Foundation in 2017 for staff and overhead expenses include unreported
14 advances from AB Foundation, as occurred in 2015, or unreported possible contributions within
15 the "reconciliations," as occurred with respect to the list rental.

16 In light of this inference, we recommend that the Commission authorize compulsory
17 process for the purpose of conducting an investigation into the purported ongoing reconciliation

⁶⁶ To be sure, AB PAC has previously reported debts that it owed to AB Foundation when the stated purpose of the debt was for "Overhead and Staff Expenses." *See* American Bridge 21st Century, Amended October 2014 Quarterly Report at 428 (Aug 1, 2015).

⁶⁷ *Compare* American Bridge 21st Century Amended 2017 Year End Report at 42 (Aug. 24, 2018) (disclosing that AB PAC received \$4,529,000 from AB Foundation during 2017) *with* American Bridge 21st Century Amended October 2016 Quarterly Report at 23 (July 1, 2016) (disclosing that AB PAC received \$720,000 from AB Foundation during 2016).

1 of funds, from the 2014 cycle forward, between the AB Respondents so as to determine the
2 scope of the reporting violations that remain within the statute of limitations.⁶⁸

3 **B. There is Reason to Believe That Correct the Record Failed to Report its Receipt**
4 **of the List Rental**
5

6 With respect to the Complaint's allegation that Correct the Record failed to report a
7 disbursement or in-kind contribution for its receipt of the email list, it appears that Correct the
8 Record failed to accurately report receipt of this list, whether as a contribution received from AB
9 PAC or as a disbursement to AB PAC for the fair market value of the rental.

10 The Response states that Correct the Record obtained the list from AB PAC, reimbursed
11 AB PAC for the value of that list, and reported the reimbursement as part of a larger \$400,000
12 payment that Correct the Record made to AB PAC at the end of 2015.⁶⁹ Correct the Record
13 argues that it "was not obligated to report it as an in-kind contribution" because of the
14 reimbursement,⁷⁰ though the larger \$400,000 transaction was reported by both parties as a
15 "contribution" from Correct the Record to AB PAC.⁷¹ Although the Response states that some
16 part of the \$400,000 payment from Correct the Record to AB PAC "accounted for its payment of
17 the fair market value of the list through the ongoing reconciliation between the two

⁶⁸ We intend to examine only that activity dating back to the 2014 cycle; though we do not intend to examine any activity outside the statute of limitations period, we will look at pre-2014 activity if necessary to inform an understanding of a later "reconciled" transaction.

⁶⁹ Joint Resp. at 5.

⁷⁰ *Id.*

⁷¹ American Bridge 21st Century Amended 2015 Year-End Report at 17 (Aug. 31, 2016); Correct the Record 2015 Year-End Report at 41 (Jan. 17, 2016). "List rental" was not reported as part of the transaction by either party, either as a purpose or an amount.

1 organizations,”⁷² neither the reports nor the Response indicate the amount of Correct the
2 Record’s payment for the list so as to determine whether Correct the Record paid fair market
3 value. Because the purported payment was not individually disclosed, the transaction is not
4 evident on the face of either committee’s reports, and we are unable to determine whether either
5 party paid or received fair market value for the email list. For these reasons, and the reasons
6 discussed above with respect to AB PAC’s purported rental of the list from AB Foundation, we
7 therefore recommend that the Commission find reason to believe that Correct the Record and
8 Elizabeth Cohen, in her official capacity as treasurer, violated 52 U.S.C. § 30104(b).

9 Because the available information does not indicate that Ready PAC rented the list to
10 Correct the Record, we recommend that the Commission find no reason to believe that Ready
11 PAC and Amy Wills Gray, in her official capacity as treasurer, violated 52 U.S.C. § 30104(b) for
12 failing to report the list rental to Correct the Record.

13 **C. There is No Reason to Believe that AB Foundation Failed to Register and Report**
14 **as a Political Committee**
15

16 The Complaint alleges that AB Foundation used the common paymaster arrangement to
17 disguise its own political activity, and may have spent a majority of its resources on political
18 activity but failed to register with, and report its activity to, the Commission.⁷³ Specifically, the
19 Complaint alleges that AB Foundation’s political activity included, in addition to AB
20 Foundation’s alleged contributions to AB PAC discussed above, work by AB Foundation
21 employees on “Trump Accountability Project” reports for AB PAC. AB Foundation’s 2015 IRS

⁷² Joint Resp. at 5.

⁷³ Compl. at 11-12.

1 Form 990, which was attached to the Complaint, reports that AB Foundation spent \$412,866 on
2 political campaign activities in 2015 as part of approximately \$5 million in total expenses.⁷⁴

3 The AB Respondents concede that some of AB Foundation's activities were political in
4 nature, as indicated in AB Foundation's filings with the IRS and Commission, but assert that
5 most of its activities were not political, deny that the common paymaster arrangement changed
6 the nature of AB Foundation's non-political activity, and deny that AB Foundation's major
7 purpose is to conduct political activity.⁷⁵

8 The Act and Commission regulations define a "political committee" as "any committee,
9 club, association or other group of persons which receives contributions aggregating in excess of
10 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
11 during a calendar year."⁷⁶ Consistent with the Supreme Court's construction of the statutory
12 definition, an organization that is not controlled by a candidate must register as a political
13 committee only if (1) it crosses the \$1,000 threshold and (2) it has as its "major purpose" the
14 nomination or election of federal candidates.⁷⁷

15 To determine an entity's "major purpose," the Commission has explained that it
16 considers a group's "overall conduct," including public statements about its mission,

⁷⁴ *Id.* at 17, 36. AB Foundation's 2011 Form 990 also reports \$5,089 spent on political campaign activities as part of \$1,677,944 in total expenses during 2011. *Id.* at 153, 165.

⁷⁵ Joint Resp. at 2 (noting that AB Foundation's political activity was reported on its IRS Form 990 returns and independent expenditure filings with the Commission when appropriate). As noted above, the Joint Response also specifically asserts that AB Foundation employees' work on "Trump Accountability" policy briefs was non-political policy and issue research.

⁷⁶ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

⁷⁷ *See* Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007) ("Supplemental E&J"); *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (holding that term "political committee" "need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate").

1 organizational documents, government filings (*e.g.*, IRS notices), the proportion of spending
2 related to “Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate),”
3 and the extent to which fundraising solicitations indicate funds raised will be used to support or
4 oppose specific candidates.⁷⁸ The Commission has stated that it compares how much of an
5 organization’s spending is for “federal campaign activity” relative to “activities that [a]re not
6 campaign related.”⁷⁹

7 As noted by the Complaint, AB Foundation’s filings with the IRS in 2011 and 2015
8 report that AB Foundation spent \$412,866 on political campaign activities in 2015 as part of
9 approximately \$5 million in total expenses and \$5,089 on political campaign activities in 2011 as
10 part of \$1,677,944 in total expenses.⁸⁰ Nonetheless, even if AB Foundation surpassed the
11 statutory threshold in those or other years, the available record does not raise an inference that
12 AB Foundation’s overall conduct indicates a major purpose of the nomination or election of
13 federal candidates. The record does not include any statements, organizational documents, or
14 government filings by AB Foundation indicating that its mission or activities have as their major
15 purpose the nomination or election of federal candidates. Furthermore, for the reasons discussed
16 above, the record does not credibly establish that AB Foundation made disguised or unreported
17 contributions to AB PAC such that its proportion of spending related to federal campaign activity
18 rises to the level of its major purpose. Accordingly, we recommend finding no reason to believe

⁷⁸ Supplemental E&J at 5597, 5605.

⁷⁹ *Id.* at 5601, 5605; *see also Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 544, 556 (4th Cir. 2012), *cert. denied*, 81 U.S.L.W. 3127 (U.S. Jan. 7, 2013) (No. 12-311) (holding that *Buckley* “did not mandate a particular methodology for determining an organization’s major purpose”); *Shays v. FEC*, 511 F. Supp. 2d 19, 24-25, 31 (D.D.C. 2007) (upholding Commission’s case-by-case approach to major purpose determination).

⁸⁰ Compl. at 17, 36, 153, 165.

1 that AB Foundation violated 52 U.S.C. §§ 30102, 30103, and 30104 by failing to organize,
2 register, and report as a political committee.

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15 **IV. RECOMMENDATIONS**

- 16 1. Find no reason to believe that American Bridge 21st Century and Rodell
17 Mollineau, in his official capacity as treasurer, violated 11 C.F.R. § 110.6(c);
18
- 19 2. Find no reason to believe that American Bridge 21st Century Foundation violated
20 52 U.S.C. § 30116(a)(8) or 11 C.F.R. § 110.6(c);
21
- 22 3. Find reason to believe that American Bridge 21st Century and Rodell Mollineau,
23 in his official capacity as treasurer, violated 52 U.S.C. § 30104(b);
24
- 25 4. Find reason to believe that Correct the Record and Elizabeth Cohen, in her official
26 capacity as treasurer, violated 52 U.S.C. § 30104(b);

⁸¹ *See supra*, n. 70.

