



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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APR 25 2019

RE: MUR 7284

Dear Messrs. Elias and Reese:

On October 12, 2017, the Federal Election Commission notified your client, American Bridge 21st Century Foundation, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On April 23, 2019, the Commission found, on the basis of the information in the complaint and information supplied by you, that there is no reason to believe American Bridge 21st Century Foundation violated 52 U.S.C. §§ 30102, 30103, 30104, 30116(a)(8), or 30122, or 11 C.F.R. §§ 110.6(c) or 110.4(b). Accordingly, the Commission closed its file in this matter as it pertains to American Bridge 21st Century Foundation. The Factual and Legal Analysis, explaining the Commission's findings, is enclosed.

The Commission reminds you that the confidentiality provisions of 52 U.S.C. § 30109 (a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Kimberly D. Hart, the attorney assigned to this matter, at (202) 694-1618.

Sincerely,

A handwritten signature in black ink that reads "Mark Shonkwiler by SG". The signature is written in a cursive style.

Mark Shonkwiler
Assistant General Counsel

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FACTUAL AND LEGAL ANALYSIS

RESPONDENT: American Bridge 21st Century Foundation

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I. INTRODUCTION

The Complaint makes a wide range of allegations relating to financial transactions between section 501(c)(4) non-profit American Bridge 21st Century Foundation (“AB Foundation”) and independent expenditure-only political committee American Bridge 21st Century (“AB PAC”) (collectively the “AB Entities”). The Complaint broadly alleges that AB PAC misreported receipts from AB Foundation as overhead and staff expenses when they were actually contributions from AB Foundation and from donors to AB Foundation who earmarked those funds for AB PAC. The Complaint also alleges that, through its disguised contributions to AB PAC, AB Foundation engaged in sufficient political activity to trigger political committee status.

For reasons set forth below, the Commission finds no reason to believe AB Foundation violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by failing to report earmarked contributions and by failing to organize, register, and report as a political committee.

II. FACTUAL BACKGROUND

AB PAC and AB Foundation are separate entities which share an address.¹

AB PAC is an independent expenditure-only political committee that is registered with the Commission.² It describes itself as a progressive research and communications organization

¹ Compl. at 4.

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

1 that is committed to “holding Republicans accountable for their words and actions.”³ AB PAC
2 made \$19,724,726 in disbursements during the 2016 election cycle⁴ and, in December 2016,
3 announced a new project it described as focused on ensuring that Donald Trump’s administration
4 would be held accountable (the “Trump Accountability Project”).⁵

5 AB Foundation is registered with the IRS as a 501(c)(4) nonprofit organization that
6 describes its mission as being “to compare and contrast progressive and conservative solutions to
7 America’s public policy concerns and to educate the American people and the nation’s leaders
8 on the results of that research.”⁶ In 2017, AB Foundation published “Trump Accountability”
9 policy briefs that the Complaint characterizes as political activity related to AB PAC’s Trump
10 Accountability Project.⁷

11 **A. AB Entities’ Financial Transactions & the Common Paymaster Arrangement**

12 From 2011 to 2018, AB PAC reported 116 receipts from AB Foundation that total
13 approximately \$15.6 million.⁸ All of these receipts were reported on line 12 of AB PAC’s
14 reports (as “offsets to operating expenditures”), most for the reported purpose of “Overhead &

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.*

⁷ *See id.* at 10, 12.

⁸ 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.

1 Staff Expenses” and some for “Overhead Expenses.”⁹ AB PAC also reported debts and
2 obligations owed to AB Foundation for “Overhead & Staff Expenses” or “Overhead Expenses”
3 in 2011, 2013, and 2014.¹⁰

4 The Complaint asserts that, starting in 2014, the AB Foundation payments that AB PAC
5 reported as offsets to operating expenditures were disproportionately high and represent an effort
6 to hide AB Foundation’s contributions to and work for AB PAC.¹¹

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

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

⁹ 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.”

¹⁰ 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).

¹¹ 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).

¹² Compl. at 5-12.

¹³ 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”).

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1 social security tax than a single employer would pay.¹⁴ Each entity must pay its own part of the
2 employment taxes and may deduct only its own part of the wages.¹⁵ The common paymaster is
3 responsible for filing information and tax returns, issuing W-2 forms, and cutting the paycheck to
4 the employee, while the other entity transfers its share of the employee expenses to the common
5 paymaster.¹⁶ The Complaint asserts that AB PAC's reported receipts from AB Foundation for
6 "Overhead and Staff" were disproportionate to the relative share of the organizations' respective
7 activities and an improper use of the common paymaster arrangement.¹⁷

8 AB PAC, as the common paymaster, disbursed salaries to the common staff.¹⁸ AB
9 Foundation either prospectively forwarded or retroactively reimbursed funds to AB PAC for the
10 work done on behalf of the foundation.¹⁹ The AB Entities indicate that at least some portion of
11 AB Foundation's transfers to AB PAC were for overhead expenses in addition to staff expenses
12 under the common paymaster arrangement.²⁰

¹⁴ *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).

¹⁵ Internal Revenue Serv., *Employer's Tax Guide* at 22.

¹⁶ See *id.*; Internal Revenue Serv., *Common Paymaster Guide* (explaining transfers between related entities utilizing common paymaster arrangement).

¹⁷ Compl. at 9. The AB Entities' compliance with IRS requirements is outside the Commission's jurisdiction and not analyzed here.

¹⁸ See Response of AB 21st Century, AB 21st Century Foundation, and Correct the Record ("Joint Resp.") at 1-2 (Nov. 29, 2017).

¹⁹ 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").

²⁰ See *id.* at 4-5 (describing transfers for overhead expenses and the AB Entities' "ongoing reconciliation based on the exchange of resources").

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

10 **III. ANALYSIS**

11 **A. There is No Reason to Believe that AB Foundation “Disguised” Earmarked** 12 **Contributions to AB PAC**

13
14 The Complaint alleges that AB Foundation disguised contributions through transfers to
15 AB PAC under the common paymaster arrangement.²¹ The Complaint alleges that the amount of
16 the reimbursements by AB Foundation exceeded its share of the costs and, therefore, constituted
17 contributions to AB PAC.²² The Complaint also alleges that AB PAC misreported receipts as
18 transfers when they were, in fact, earmarked contributions from unnamed contributors forwarded
19 by AB Foundation as conduits.

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

²¹ Compl. at 5.

²² 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”).

1 identical to the amounts of donations received by AB Foundation.”²³ 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.²⁴

7 While the Complaint alleges that AB Foundation received donations earmarked for AB
8 PAC’s political activity and masked those earmarked funds when passing them on to AB PAC
9 under the common paymaster arrangement, it does not identify specific donations to AB
10 Foundation that were earmarked for AB PAC or provide a basis for believing those donations
11 were so earmarked. Instead, the Complaint makes general allegations without identifying any
12 particular contributions to AB PAC that were purportedly earmarked or any explicit indicia of
13 earmarking attributable to such contributions. Thus, whether the Complaint is construed as a
14 violation of 52 U.S.C. § 30116(a)(8) and 11 C.F.R. § 110.6 or a violation of 52 U.S.C. § 30122
15 and 11 C.F.R. § 110.4(b), there is no evidence in the record to support a finding that AB
16 Foundation failed to report, as an intermediary, contributions to AB PAC. As such, the
17 Commission finds no reason to believe that AB Foundation violated 52 U.S.C. §§ 30116(a)(8),
18 30122 or 11 C.F.R. §§ 110.6(c), 110.4(b).

19 **B. There is No Reason to Believe that AB Foundation Failed to Register and Report**
20 **as a Political Committee**
21

22 The Complaint alleges that AB Foundation used the common paymaster arrangement to

²³ Compl. at 11.

²⁴ Joint Resp. at 3.

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1 disguise its own political activity, and may have spent a majority of its resources on political
2 activity but failed to register with and report its activity to the Commission.²⁵ Specifically, the
3 Complaint alleges that AB Foundation’s political activity included contributions from AB
4 Foundation to AB PAC in the form of “disproportionately high” transfers to AB PAC under the
5 common paymaster arrangement²⁶ as well as work by AB Foundation employees on “Trump
6 Accountability Project” reports for AB PAC.

7 For example, according to the Complainant’s analysis, AB Foundation allegedly paid
8 approximately 73% of the AB Respondents’ employee expenses in 2017 even though most of the
9 common employees’ work was related to AB PAC’s Trump Accountability Project.²⁷ The
10 Complaint specifically notes that AB PAC’s reports show that AB Foundation transferred
11 \$2,800,000 to AB PAC during the January 1 – June 30, 2017, reporting period and AB PAC
12 disbursed only \$2,800,838 in employee compensation payments during the same period; the
13 Complaint assumes that the AB Foundation transfers were all for common employee expenses
14 and thus concludes that AB PAC paid only \$838 of expenses for costs it incurred in that period
15 by shared employees.²⁸

²⁵ Compl. at 11-12.

²⁶ 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”).

²⁷ Compl. at 11-12.

²⁸ *Id.* at 7-8.

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1 AB Foundation's 2015 IRS Form 990, which was attached to the Complaint, reports that
2 AB Foundation spent \$412,866 on political campaign activities in 2015 as part of approximately
3 \$5 million in total expenses.²⁹

4 The AB Entities concede that some of AB Foundation's activities were political in nature,
5 as indicated in AB Foundation's filings with the IRS and Commission, but assert that AB
6 Foundation employees' work on "Trump Accountability" policy briefs was non-political policy
7 and issue research in order to publish briefs to educate people about public policy concerns and
8 assert that most of its activities were not political; the Response denies that the common
9 paymaster arrangement changed the nature of AB Foundation's non-political activity, and denies
10 that AB Foundation's major purpose is to conduct political activity.³⁰

11 The Act defines a "political committee" as "any committee, club, association or other
12 group of persons which receives contributions aggregating in excess of \$1,000 during a calendar
13 year or which makes expenditures aggregating in excess of \$1,000 during a calendar year."³¹
14 Notwithstanding the threshold for contributions and expenditures, an organization will be
15 considered a political committee only if its "major purpose is Federal campaign activity (*i.e.*, the
16 nomination or election of a Federal candidate)."³² Political committees are required to register

²⁹ *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.

³⁰ Joint Resp. at 2-3 (noting that AB Foundation's political activity was reported on its IRS Form 990 returns and independent expenditure filings with the Commission when appropriate).

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

³² *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 with the Commission, meet organizational and recordkeeping requirements, and file periodic
2 disclosure reports.³³

3 As noted above, AB Foundation's filings with the IRS in 2011 and 2015 report that AB
4 Foundation spent \$412,866 on political campaign activities in 2015 as part of approximately \$5
5 million in total expenses and \$5,089 on political campaign activities in 2011 as part of
6 \$1,677,944 in total expenses.³⁴ Nonetheless, even if AB Foundation surpassed the statutory
7 threshold in those or other years, the available record does not raise an inference that AB
8 Foundation's overall conduct indicates a major purpose of the nomination or election of federal
9 candidates. The record does not include any statements, organizational documents, or
10 government filings by AB Foundation indicating that its mission or activities have as their major
11 purpose the nomination or election of federal candidates.

12 And, although the Complaint alleges that some of AB Foundation's transfers to AB PAC
13 under the common paymaster arrangement were "disproportionately high" and, thus, actually
14 contributions to the PAC, the available information provides no evidence that would support a
15 reasonable inference that AB Foundation was making contributions to AB PAC rather than
16 paying its share of expenses handled under the common paymaster arrangement. The Complaint
17 speculates about the relative employee-related costs of the AB Entities, but provides no evidence
18 that AB Foundation paid shared employees for their work on AB PAC activity, except by further
19 speculation that AB Foundation employees' work on "Trump Accountability" reports was
20 "substantially" for an AB PAC project. Given the lack of specific allegations in the Complaint,

³³ See 52 U.S.C. §§ 30102; 30103; 30104.

³⁴ Compl. at 17, 36, 153, 165.

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1 and the AB Entities' assertion that AB Foundation employees produced non-political policy
2 briefs and issue research about public policy concerns, there is no basis for concluding that AB
3 Foundation reimbursed AB PAC in excess of its own portion of the shared employees' costs
4 such that the payments represent AB Foundation's contributions to AB PAC. Thus, the record
5 does not credibly establish that AB Foundation made disguised or unreported contributions to
6 AB PAC such that its proportion of spending related to federal campaign activity rises to the
7 level of its major purpose.

8 Accordingly, the Commission finds no reason to believe that AB Foundation violated 52
9 U.S.C. §§ 30102, 30103, and 30104 by failing to organize, register, and report as a political
10 committee.