



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 23, 2020

VIA ELECTRONIC MAIL

Brian Svoboda, Esq.
Shanna Reulbach, Esq.
Perkins Coie, LLP
700 13th Street, NW
Suite 800
Washington, DC 20005-3960
BSvoboda@perkinscoie.com
SReulbach@perkinscoie.com

RE: MUR 7284
AB PAC

Dear Mr. Svoboda and Ms. Reulbach:

Based on a complaint filed with the Federal Election Commission on October 10, 2017, and information supplied by your client AB PAC (formerly known as American Bridge 21st Century) and Rodell Mollineau in his official capacity as treasurer (“AB PAC”), the Commission, on April 23, 2019, found that there was reason to believe that AB PAC violated 52 U.S.C. § 30104(b) and instituted an investigation of this matter.

Based on the available record, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that AB PAC violated 52 U.S.C. § 30104(b).

The Commission may or may not approve the General Counsel’s recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file a brief stating your position on the issues and replying to the brief of the General Counsel.¹ The General Counsel’s brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

¹ You may submit enforcement materials, such as reply briefs, to the FEC electronically at cela@fec.gov, or to the staff attorney assigned to the matter as applicable. Enforcement-related materials submitted only by mail will be deemed received when actually received by OGC staff, subject to delays due to the intermittent processing of mail. See https://www.fec.gov/resources/cms-content/documents/status_of_fec_operations_8-10-2020.pdf.

MUR 7284 (AB PAC)
Letter Enclosing PCTB Brief
Page 2 of 2

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days and may require that your clients toll the running of the statute of limitations before granting such an extension.

You may also request additional information gathered by the Commission in the course of its investigation in this matter. *See Agency Procedure for Disclosure of Documents and Information in the Enforcement Process*, 76 Fed. Reg. 34986 (June 15, 2011).

In addition, you may also request an oral hearing before the Commission. *See Procedural Rules for Probable Cause Hearings*, 72 Fed. Reg. 64919 (Nov. 19, 2007) and *Amendment of Agency Procedures for Probable Cause Hearings*, 74 Fed. Reg. 55443 (Oct. 28, 2009). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted. If you request a probable cause hearing, the Commission may request that you toll the statute of limitations in connection with that hearing. *Id.* at 64,920.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement. If we are unable to reach an agreement after 30 days, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty. *See* 52 U.S.C. § 30109(a)(6)(A).

Should you have any questions, please contact Wanda D. Brown, the attorney assigned to this matter, at (202) 694-1513.

Sincerely,

Handwritten signature of Lisa J. Stevenson in cursive script, followed by the text "/by wdb".

Lisa J. Stevenson
Acting General Counsel

Enclosure: Brief

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
 3 In the Matter of)
 4)
 5 AB PAC (f/k/a American Bridge 21st Century)) MUR 7284
 6 and Rodell Mollineau in his)
 7 official capacity as treasurer)
 8

9 **GENERAL COUNSEL’S BRIEF**

10
 11 **I. STATEMENT OF THE CASE**

12
 13 The Federal Election Commission (the “Commission”) received a Complaint alleging
 14 that an independent expenditure-only political committee (“IEOPC”), AB PAC (formerly known
 15 as American Bridge 21st Century)¹ (“AB PAC”), failed to properly report various transactions,
 16 including transfers involving and debt owed to a related section 501(c)(4) non-profit corporation,
 17 American Bridge 21st Century Foundation (“AB Foundation”) and a related hybrid political
 18 committee, Correct the Record.

19 The Complaint specifically alleges that AB PAC failed to report \$610,800 in outstanding
 20 debt to AB Foundation in its 2015 Year-end Disclosure Report filed with the Commission,
 21 despite AB Foundation’s IRS filings stating that AB PAC owed it this amount at the end of
 22 2015.² Respondents do not dispute the allegation, and acknowledge that at the end of 2015,
 23 under a common paymaster arrangement, AB Foundation had pre-paid AB PAC for \$610,800 in
 24 goods and services to be delivered in 2016, and that AB PAC did not report its obligation to
 25 provide such goods and services as debt on its disclosure reports filed with the Commission.³ In

¹ See AB PAC, FEC Form 1, Statement of Organization (Nov. 10, 2019).

² Following the reason to believe findings in this matter, Respondents tolled the applicable statute of limitations for a total of ninety (90) days, which extends the five year statute of limitations for reporting violations on its 2015 Year End Report (filed on January 15, 2016) until April 15, 2021.

³ See Response of AB 21st Century, AB 21st Century Foundation, and Correct the Record (“Joint Resp.”) at 4 (Nov. 27, 2017).

1 responding to the Complaint, Respondents stated that Commission regulations do not require
2 political committees to report obligations for their own recurring salary and overhead until the
3 payments are actually due, and that AB PAC's holding of \$610,800 in pre-paid salary and
4 overhead payments to be made on behalf of AB Foundation should not be considered a
5 reportable obligation.⁴ On April 23, 2019, the Commission rejected Respondent's position and
6 found reason to believe that AB PAC violated 52 U.S.C. § 30104(b) in connection with its
7 unreported debt to AB Foundation.⁵

8 The Complaint also specifically alleges that Correct the Record had obtained the use of a
9 valuable email list from a third party without reporting any payment to the original owner.
10 AB PAC, AB Foundation, and Correct the Record responded to this allegation by stating that AB
11 Foundation had purchased the email list from a third party in mid-2015 for \$150,000, and then
12 transferred the list to AB PAC at the end of 2015, which in turn, almost immediately transferred
13 the list to Correct the Record. AB PAC asserts that Correct the Record compensated it for the
14 email list as a portion of a \$400,000 transfer, made in December 2015, that both AB PAC and
15 Correct the Record reported as being a contribution.⁶ AB PAC states that it did not report the
16 receipt of the mailing list from AB Foundation because it was offset by other transactions as part
17 of a financial reconciliation between the two related entities.⁷ AB PAC offers no explanation for
18 why the transfer from Correct the Record was reported only as a contribution and not as
19 compensation for the email list. On April 23, 2019, the Commission found reason to believe that

⁴ *Id.*

⁵ Certification, MUR 7284 (AB PAC, *et al*) (April 24, 2019).

⁶ *See* Joint Resp. at 5.

⁷ *See* Joint Resp. at 4.

1 AB PAC had violated 52 U.S.C. § 30104(b) by failing to report the receipt of the email list from
2 AB Foundation and by misreporting the nature of the \$400,000 receipt from Correct the Record.⁸

3 The Office of the General Counsel sought information regarding additional transactions
4 that resulted from the organizations' "reconciliation process" and how those transactions were or
5 were not disclosed, as well as additional information regarding transactions related to the transfer
6 of email lists between the entities. Respondents, who did not dispute the reporting violation in
7 connection with the email list, initially agreed to toll the statute of limitations for ninety (90)
8 days in exchange for an extension of time in which to respond to these informal discovery
9 requests regarding similar transactions. Respondents, however, have not produced responsive
10 documents or answered questions about what other transactions went unreported as a result of
11 the financial reconciliation process. AB PAC has refused requests to toll the applicable statute of
12 limitations since the Commission lost its quorum in August 2019.

13 Based on the record before the Commission, the Office of the General Counsel is now
14 prepared to recommend that the Commission find probable cause to believe that AB PAC
15 violated 52 U.S.C. § 30104(b) in connection with both the unreported debt to AB Foundation and
16 the unreported receipt of the mailing list from AB Foundation, and the misreporting of the
17 payment for transferring the mailing list to Correct the Record.

18 **II. FACTUAL BACKGROUND**

19 AB PAC, AB Foundation, and Correct the Record are related organizations that share an
20 address in Washington D.C.⁹ AB PAC is an IEOPC that is registered with the Commission.¹⁰

⁸ *Id.*

⁹ *See* MUR 7284 AB PAC Factual and Legal Analysis.

¹⁰ *See* AB 21st Century Statement of Organization (Jan. 31, 2011).

1 AB PAC made \$19,724,726 in disbursements during the 2016 election cycle.¹¹ Correct the
2 Record operates as a hybrid political committee and is registered with the Commission.¹² AB
3 Foundation is registered with the IRS as a 501(c)(4) nonprofit organization.¹³

4 **A. AB PAC's Unreported Debt to AB Foundation**

5 From 2011 to 2018, AB PAC reported 116 receipts from AB Foundation that total
6 approximately \$15.6 million.¹⁴ All of these receipts were reported on line 12 of AB PAC's
7 reports as "offsets to operating expenditures," most for the reported purpose of "Overhead &
8 Staff Expenses" and some for "Overhead Expenses."¹⁵ AB PAC also reported debts and
9 obligations owed to AB Foundation for "Overhead & Staff Expenses" or "Overhead Expenses"
10 in 2011, 2013, and 2014.¹⁶

¹¹ 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).

¹² See Correct the Record Amended Statement of Organization (June 5, 2017). Correct the Record was a project of AB PAC before it registered as a political committee in 2015.

¹³ See MUR 7284 AB PAC Factual and Legal Analysis.

¹⁴ These totals were calculated by exporting data from the Commission's online database for 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.

¹⁵ 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."

¹⁶ 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).

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

2 Under the common paymaster provisions in the Internal Revenue Code, two or more
3 “related” entities, like the AB Entities, may employ the same individuals at the same time and
4 pay these individuals through only one of the entities (the “common paymaster”), which is
5 considered, for federal tax purposes, to be a single employer.¹⁷ By using a common paymaster
6 arrangement, related entities pay, in total, no more social security tax than a single employer
7 would pay.¹⁸ Each entity must pay its own part of the employment taxes and may deduct only its
8 own part of the wages.¹⁹ The common paymaster is responsible for filing information and tax
9 returns, issuing W-2 forms, and cutting the paychecks to the employees, while the other entity
10 transfers its share of the employee expenses to the common paymaster.²⁰

11 AB PAC, as the common paymaster, disbursed salaries to the common staff.²¹

12 AB Foundation either prospectively forwarded or retroactively reimbursed funds to AB PAC for
13 the work done on behalf of the foundation.²² The AB Entities indicate that at least some portion

¹⁷ 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”).

¹⁸ *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).

¹⁹ Internal Revenue Serv., Employer's Tax Guide at 22.

²⁰ See *id.*; Internal Revenue Serv., *Common Paymaster Guide* (explaining transfers between related entities utilizing common paymaster arrangement).

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”).

1 of AB Foundation's transfers to AB PAC were for overhead expenses in addition to staff
2 expenses under the common paymaster arrangement.²³

3 The record does not indicate which of AB PAC's reported disbursements are payments,
4 in whole or in part, for the AB Entities' shared employees' work for AB Foundation under the
5 common paymaster arrangement. The record also does not indicate what portion of the
6 overhead, staff, or other offsets to operating expenses that AB PAC reported receiving from
7 AB Foundation are receipts for AB Foundation's salary obligations under the common
8 paymaster arrangement and which portion are receipts for other purposes.²⁴ Additionally, the
9 record does not break down how much AB PAC paid to its own, as opposed to AB Foundation's,
10 employees because AB PAC's reported disbursements for "salary," "payroll," and related
11 expenses do not differentiate between entities. During the investigation, the Office of the
12 General Counsel requested that AB PAC provide information regarding these arrangements, and
13 had discussions with AB PAC's counsel about producing an affidavit explaining the
14 "reconciliation process," but AB PAC declined to provide any such information.²⁵

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

²⁴ The Complaint in this matter broadly alleged that AB PAC systemically misreported earmarked contributions from undisclosed AB Foundation donors as receipts from AB Foundation for salary and overhead. See MUR 7284, AB PAC Factual and Legal Analysis. In the absence of any evidence to support this allegation, the Commission found no reason to believe that AB PAC had misreported any allegedly earmarked contributions as estimated salary and overhead reimbursements. *Id.* at 10-13; Cert., MUR 7284 (AB PAC, *et al.*) (Apr. 24, 2019).

²⁵ See *e.g.*, Ltr. from Mark Shonkwiler, Assistant General Counsel (FEC) to Marc Elias, Esq. (June 21, 2019); Ltr. from Chris Edwards, Attorney (FEC) to Brian Svoboda, Esq. (Feb. 18, 2020). Emails from Mark Shonkwiler, Assistant General Counsel (FEC) to Brian Svoboda, Esq. (May 29, 2020; June 2, 2020; July 8, 2020; July 10, 2020; Aug. 19, 2020; Oct. 20, 2020; Nov. 17, 2020; Nov. 23, 2020; Dec. 2, 2020; Dec. 7, 2020).

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

2 At the end of 2015, AB Foundation paid AB PAC \$610,800 for salary and overhead
3 expenses that would be incurred in 2016, and reported this to the IRS on a Form 990 listing it as
4 an amount "Due from American Bridge PAC."²⁶ AB PAC did not separately disclose any of the
5 \$610,800 debt that it owed in the form of salary payments and overhead to AB Foundation on its
6 reports filed with the Commission at the end of 2015.²⁷

7 AB PAC disputes that the amount that AB Foundation reported on its Form 990 as being
8 "Due from AB PAC" was a "debt," stating that the amount was not a traditional "debt and
9 obligation" that had to be reported to the Commission. Instead, AB PAC states that the amount
10 was a transfer under the common paymaster arrangement that "represented the Foundation's
11 accounting of funds it had paid to the PAC in 2015 which had not been used for staff and
12 overhead expenses during the year."²⁸ AB PAC cited Commission regulations providing that
13 "any obligation incurred for rent, salary or other recurring administrative expense shall not be
14 reported as a debt until the due date"²⁹ and asserted that the Act and Commission regulations do
15 not require a political committee to report surplus funds provided for the purpose of making
16 future salary and overhead payments as debts where there is no understanding that the funds
17 have been loaned or must be repaid.³⁰

²⁶ Joint Resp. at 4.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* (citing 11 C.F.R. 104.11(b)).

³⁰ *Id.*

1 AB PAC made no further reference to the debt reporting issue in its subsequent response,
2 after the Commission rejected its position in making the reason to believe findings.³¹

3 **B. Email List Transfer from AB Foundation to AB PAC to Correct the Record**

4 AB PAC, AB Foundation, and Correct the Record stated that the email list rental, which
5 led to the transfer of a valuable list from a third party to Correct the Record, involved a series of
6 transactions in which AB Foundation leased the email list from Ready PAC for \$150,000,³² and
7 Ready PAC reported receiving \$150,000 from “American Bridge 21st Century” on May 6,
8 2015.³³ AB PAC leased the email list from AB Foundation at the end of 2015, but “accounted
9 for its payment of the fair market value of the list through the ongoing reconciliation” between
10 the AB Entities.³⁴ AB PAC did not specifically describe the list rental as the purpose of any
11 reported disbursement to, or receipt from, AB Foundation. AB PAC then leased the list to
12 Correct the Record, which “reimbursed AB PAC for the value of the list as part of a \$400,000
13 payment made at the end of 2015.”³⁵ While both AB PAC and Correct the Record reported this
14 \$400,000 payment, neither report stated that the payment was for the email list rental.³⁶
15 AB PAC does not dispute that failing to report the receipt of the mailing list and misreporting the

³¹ See Post-RTB Submission of AB 21st Century (June 14, 2019).

³² Joint. Resp. at 4-5 (noting that AB Foundation reported the list rental from Ready PAC in a 2015 IRS filing).

³³ Ready PAC 2015 Mid-Year Report at 23 (July 23, 2015).

³⁴ Joint Resp. at 5.

³⁵ *Id.*

³⁶ 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”).

1 \$400,000 transfer from Correct the Record as being a contribution, rather than compensation for
2 the transfer of the email list, resulted in violations of the Act.

3 **III. ANALYSIS**

4 Political committees such as AB PAC must comply with certain organizational and
5 reporting requirements set forth in the Act. Among other requirements, a political committee
6 must register with the Commission, appoint a treasurer who maintains its records, and file
7 periodic reports for disclosure to the public.³⁷ The periodic disclosure reports committees file
8 with the Commission must disclose all receipts they receive and disbursements they make.³⁸
9 These reports must itemize all contributions received from contributors that aggregate in excess
10 of \$200 per election cycle and must itemize each reportable disbursement with the date, amount,
11 and purpose of the disbursement.³⁹ Political committees must also disclose debts or obligations
12 exceeding \$500 in the report that covers the date in which the debt was incurred and
13 continuously report debts until they are extinguished.⁴⁰

14 **A. Failure to Report Debt Incurred Via Common Paymaster Transactions**

15 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

³⁷ See 52 U.S.C. §§ 30102-30104.

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

³⁹ 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).

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

1 to different types of political committees about the variety of methods available to share or
2 allocate costs — such as use of advances or reimbursements for the expenses of staff shared with
3 other entities — and the various methods available for reporting such costs, including through
4 reporting reimbursements for shared costs as offsets to operating expenditures.⁴¹

5 Based on this guidance and the information available, AB PAC was permitted to pay
6 shared employees' salary on behalf of both of the AB Entities; receive reimbursements from
7 AB Foundation for the share of employee costs attributable to those employees' work for
8 AB Foundation; report the salary payments made by AB PAC for shared employees' work for
9 both AB Entities as disbursements on its regularly scheduled reports; and report reimbursements
10 from AB Foundation for the share of employee costs attributable to those employees' work for
11 AB Foundation as offsets to operating expenditures.

12 Contrary to AB PAC's assertions, however, the general permissibility of a common
13 paymaster arrangement does not excuse inaccurate reporting of, or a failure to disclose,
14 transactions made pursuant to a common paymaster arrangement.⁴² AB PAC did not report debt
15 to AB Foundation and, as explained below, did not accurately report its transactions with AB
16 Foundation and Correct the Record.

⁴¹ 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 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).

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

1 AB PAC did not report its obligations relating to the \$610,800 in advance payments for
2 payroll expenses paid by AB Foundation to AB PAC.⁴³ AB PAC reported receipts for
3 “Overhead & Staff Expenses” or “Overhead Expenses” from AB Foundation.⁴⁴ While AB PAC
4 asserts that “the amount was not a ‘debt’ to be paid by AB PAC, the amount of funds held by AB
5 PAC was to be used to pay AB Foundation payroll and overhead expenses.”⁴⁵ In past matters,
6 the Commission has determined a committee must disclose funds advanced to it.⁴⁶ If, as the
7 Response asserts, the reported amount represents advanced funds, AB PAC should have
8 disclosed those receipts as such. Additionally, the corresponding payments made by AB PAC to
9 cover the shared expenses for payroll and overhead expenses that AB PAC, as the common
10 paymaster, disbursed to pay the salary and overhead expenses of the two organizations’ shared
11 staff and expenses should have been reported and clearly identified as such. Because the receipts
12 from AB Foundation were not specifically labeled as advanced funds, it is not evident on the
13 face of AB PAC’s reports whether these receipts represent advance payments from AB
14 Foundation or were in fact contributions from AB Foundation. AB PAC’s purported reliance on
15 a Commission regulation that allows an entity not to report its salary and overhead obligations
16 for the current pay period, or the current rental period until the date on which payment is due,

⁴³ See Joint Resp. at 4; AB 21st Century April 2016 Quarterly Report (Apr. 15, 2016).

⁴⁴ AB 21st Century April 2016 Quarterly Report at 15-16 (Apr. 15, 2016).

⁴⁵ Joint Response at 4.

⁴⁶ 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 does not apply to funds paid in advance to cover another entity's recurring salary and overhead
2 payments for an undetermined period of time.

3 **B. AB PAC Either Failed to Report or Misreported List Rental, and Other**
4 **Possible Receipts or Disbursements within "Reconciliation" Transactions**

5 AB PAC failed to correctly report an email list it received from AB Foundation in 2015.
6 Under Commission regulations, the unpaid receipt of an email list is an in-kind contribution.⁴⁷
7 In its response to the Complaint, Respondents state that the email list should not be considered
8 an in-kind contribution because AB PAC leased the list from AB Foundation.⁴⁸ The
9 Commission has determined that a mailing list can be leased, without a contribution resulting, if
10 (1) it has an ascertainable fair market value and (2) it is leased at the usual and normal charge in
11 a "bona fide, arm's length transaction and the list [is] used in a commercially reasonable manner
12 consistent with such an arms-length agreement."⁴⁹ A review of AB PAC's Commission filings
13 shows that AB PAC failed to report a disbursement to AB Foundation reflecting a fair market-
14 value payment for the list. Although the Response indicates that AB PAC "accounted for its
15 payment of the fair market value of the list through the ongoing reconciliation" with AB
16 Foundation,⁵⁰ "list rental" is not fairly included within AB PAC's reported disbursements for
17 "salary" or "payroll" and receipts for "Overhead & Staff Expenses" or "Overhead Expenses"

⁴⁷ 11 C.F.R. 100.52(d).

⁴⁸ Joint Resp. at 5.

⁴⁹ Advisory Op. 2002-14 (Libertarian National Committee) at 4; *see also* Advisory Op. 2006-34 (Working Assets, Inc.) at 5.

⁵⁰ Joint Resp. at 5.

1 from AB Foundation.⁵¹ Because the purported payment was not individually disclosed, the
2 transaction is not evident on the face of AB PAC's reports, and we are unable to determine
3 whether AB PAC paid fair market value for the email list.

4 Additionally, the Response states that Correct the Record obtained the list from AB PAC,
5 reimbursed AB PAC for the value of that list, and reported the reimbursement as part of a larger
6 \$400,000 payment that Correct the Record made to AB PAC at the end of 2015.⁵² Although the
7 Response states that some part of the \$400,000 payment from Correct the Record to AB PAC
8 "accounted for its payment of the fair market value of the list through the ongoing reconciliation
9 between the two organizations,"⁵³ neither the reports nor the Response indicates the amount of
10 Correct the Record's payment for the list so as to determine whether Correct the Record paid fair
11 market value. Because the purported payment was not individually disclosed, the transaction is
12 not evident on the face of either committee's reports, and we are unable to determine whether
13 AB PAC received fair market value for the email list.

14 Thus, the available information indicates that AB PAC violated the Act's reporting
15 requirements in connection with reporting its receipt of the email list from the AB Foundation
16 and purported payment for the email list to AB Foundation in 2015 and the purported payment
17 for the email list from Correct the Record.

⁵¹ 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").

⁵² Joint Resp. at 5.

⁵³ *Id.*

1 **III. CONCLUSION**

2 Based on the foregoing, the Office of General Counsel is prepared to recommend that
3 there is probable cause to believe that AB PAC and Rodell Mollineau, in his official capacity as
4 treasurer, violated 52 U.S.C. § 30104(b) by failing to report debt to AB Foundation, failing to
5 report the receipt of the mailing list from AB Foundation, and misreporting the payments Correct
6 the Record made to obtain the mailing list.

7
8
9

10 December 23, 2020

11 Date

Lisa J. Stevenson/by wdb

12 Lisa J. Stevenson
13 Acting General Counsel

14
15
16
17
18
19
20

Charles Kitcher/by wdb

21 Charles Kitcher
22 Acting Associate General Counsel

23
24
25
26

Mark Shonkwiler

27 Mark D. Shonkwiler
28 Assistant General Counsel

29
30

Wanda D. Brown

Wanda D. Brown
Attorney