



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

December 23, 2020

**VIA ELECTRONIC MAIL**

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RE: MUR 7284  
Correct the Record

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 Correct the Record and Elizabeth Cohen in her official capacity as treasurer ("Correct the Record"), the Commission, on April 23, 2019, found that there was reason to believe that Correct the Record 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 Correct the Record 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.<sup>1</sup> 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.

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<sup>1</sup> You may submit enforcement materials, such as reply briefs, to the FEC electronically at [cela@fec.gov](mailto: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](https://www.fec.gov/resources/cms-content/documents/status_of_fec_operations_8-10-2020.pdf).

MUR 7284 (Correct the Record)  
Letter Enclosing PCTB Brief  
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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

**BEFORE THE FEDERAL ELECTION COMMISSION**

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2  
3 In the Matter of )  
4 )  
5 Correct the Record ) MUR 7284  
6 and Elizabeth Cohen in her )  
7 official capacity as treasurer )  
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**GENERAL COUNSEL’S BRIEF**

**I. STATEMENT OF THE CASE**

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13 The Federal Election Commission (the “Commission”) received a Complaint alleging  
14 that a hybrid political committee, Correct the Record and Elizabeth Cohen in her official  
15 capacity as treasurer, (“Correct the Record”) failed to properly report various transactions,  
16 including transfers with a related section 501(c)(4) non-profit corporation, American Bridge 21<sup>st</sup>  
17 Century Foundation (“AB Foundation”) and a an independent expenditure-only political  
18 committee (“IEOPC”), AB PAC (formerly known as American Bridge 21<sup>st</sup> Century)  
19 (“AB PAC”).

20 The Complaint specifically alleges that Correct the Record failed to report the receipt of a  
21 valuable mailing list that it used for mailings in late 2015 or early 2016.<sup>1</sup> AB PAC, AB  
22 Foundation, and Correct the Record jointly responded to this allegation by stating that AB  
23 Foundation had purchased the email list from a third party in mid-2015 for \$150,000, and then  
24 transferred the list to AB PAC at the end of 2015, which in turn, almost immediately transferred  
25 the list to Correct the Record.<sup>2</sup> Respondents assert that Correct the Record compensated AB  
26 PAC for the email list as a portion of a \$400,000 transfer, made in December 2015, that both AB

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<sup>1</sup> 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.

<sup>2</sup> See Response of AB 21<sup>st</sup> Century, AB 21<sup>st</sup> Century Foundation, and Correct the Record (“Joint Resp.”) at 4 (Nov. 27, 2017).

1 PAC and Correct the Record reported as being a contribution.<sup>3</sup> Correct the Record offers no  
2 explanation for why the payment to AB PAC was reported only as a contribution and not as  
3 compensation for the email list. On April 23, 2019, the Commission found reason to believe that  
4 Correct the Record had violated 52 U.S.C. § 30104(b) by misreporting the nature of the  
5 \$400,000 payment to AB PAC.<sup>4</sup>

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

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

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<sup>3</sup> *Id.* at 5.

<sup>4</sup> *Id.*

1    **II.    FACTS**

2            AB PAC, AB Foundation, and Correct the Record are related organizations that share an  
3    address in Washington D.C.<sup>5</sup> Correct the Record operates as a hybrid political committee and is  
4    registered with the Commission.<sup>6</sup> AB Foundation is registered with the IRS as a 501(c)(4)  
5    nonprofit organization.<sup>7</sup>

6            The Complaint alleges that Correct the Record failed to report the receipt or use of an  
7    email list that it received in late 2015 from Ready PAC.<sup>8</sup> In support of this allegation, the  
8    Complaint cites a December 2015 email posted on Wikileaks that references Correct the  
9    Record's "emails to the larger Ready for Hillary list."<sup>9</sup>

10           AB PAC, AB Foundation, and Correct the Record stated that the email list rental, which  
11    led to the transfer of a valuable list from a third party to Correct the Record, involved a series of  
12    transactions in which AB Foundation leased the email list from Ready PAC for \$150,000,<sup>10</sup> and  
13    Ready PAC reported receiving \$150,000 from "American Bridge 21<sup>st</sup> Century" on May 6,  
14    2015.<sup>11</sup> AB PAC leased the email list from AB Foundation at the end of 2015, but "accounted

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<sup>5</sup>        *See* MUR 7284 Correct the Record Factual and Legal Analysis.

<sup>6</sup>        *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.

<sup>7</sup>        *See* MUR 7284 AB PAC Factual and Legal Analysis.

<sup>8</sup>        Compl. at 13-14.

<sup>9</sup>        *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").

<sup>10</sup>       Joint. Resp. at 4-5 (noting that AB Foundation reported the list rental from Ready PAC in a 2015 IRS filing).

<sup>11</sup>       Ready PAC 2015 Mid-Year Report at 23 (July 23, 2015).

1 for its payment of the fair market value of the list through the ongoing reconciliation” between  
2 the AB Entities.<sup>12</sup> AB PAC then leased the list to Correct the Record, which “reimbursed AB  
3 PAC for the value of the list as part of a \$400,000 payment made at the end of 2015.”<sup>13</sup> While  
4 both AB PAC and Correct the Record reported this \$400,000 payment, neither report stated that  
5 the payment was for the email list rental.<sup>14</sup> Correct the Record does not dispute that  
6 misreporting the purpose of the \$400,000 transfer to AB PAC as a contribution, rather than  
7 compensation for the transfer of the email list, resulted in violations of the Act.

### 8 **III. ANALYSIS**

9 Political committees such as Correct the Record must comply with certain organizational  
10 and reporting requirements set forth in the Act. Among other requirements, a political  
11 committee must register with the Commission, appoint a treasurer who maintains its records, and  
12 file periodic reports for disclosure to the public.<sup>15</sup> The periodic disclosure reports committees  
13 file with the Commission must disclose all receipts they receive and disbursements they make.<sup>16</sup>  
14 These reports must itemize all contributions received from contributors that aggregate in excess

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<sup>12</sup> Joint Resp. at 5.

<sup>13</sup> *Id.*

<sup>14</sup> See American Bridge 21<sup>st</sup> 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”).

<sup>15</sup> See 52 U.S.C. §§ 30102-30104.

<sup>16</sup> 52 U.S.C. § 30104(a), (b); 11 C.F.R. § 104.3(a), (b).

1 of \$200 per election cycle and must itemize each reportable disbursement with the date, amount,  
2 and purpose of the disbursement.<sup>17</sup>

3 Correct the Record failed to correctly report the acquisition of the email list it received  
4 from AB PAC in 2015. The Commission has determined that a mailing list can be leased,  
5 without a contribution resulting, if (1) it has an ascertainable fair market value and (2) it is leased  
6 at the usual and normal charge in a “bona fide, arm’s length transaction and the list [is] used in a  
7 commercially reasonable manner consistent with such an arms-length agreement.”<sup>18</sup>

8 Additionally, the Response states that Correct the Record obtained the list from AB PAC,  
9 reimbursed AB PAC for the value of that list, and reported the reimbursement as part of a larger  
10 \$400,000 payment that Correct the Record made to AB PAC at the end of 2015.<sup>19</sup> Although the  
11 Response states that some part of the \$400,000 payment from Correct the Record to AB PAC  
12 “accounted for its payment of the fair market value of the list through the ongoing reconciliation  
13 between the two organizations,”<sup>20</sup> neither the reports nor the Response indicates the amount of  
14 Correct the Record’s payment for the list so as to determine whether Correct the Record paid fair  
15 market value. Because the purported payment was not individually disclosed, the transaction is

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<sup>17</sup> 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).

<sup>18</sup> Advisory Op. 2002-14 (Libertarian National Committee) at 4; *see also* Advisory Op. 2006-34 (Working Assets, Inc.) at 5.

<sup>19</sup> Joint Resp. at 5.

<sup>20</sup> *Id.*

1 not evident on the face of either committee's reports, and we are unable to determine whether  
 2 Correct the Record paid fair market value for the email list.

3 Thus, the available information indicates that Correct the Record violated the Act's  
 4 reporting requirements in connection with reporting its payment AB PAC for the email list.

5 **III. CONCLUSION**

6 Based on the foregoing, the Office of General Counsel is prepared to recommend that  
 7 there is probable cause to believe that Correct the Record and Elizabeth Cohen in her official  
 8 capacity as treasurer, violated 52 U.S.C. § 30104(b) by misreporting the purpose of the payments  
 9 Correct the Record made to AB PAC obtain the mailing list.

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December 23, 2020

Date

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