



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
AB PAC f/k/a American Bridge 21st Century)	
and Rodell Mollineau, in his official capacity)	MUR 7284
as treasurer)	
)	
Correct the Record and Elizabeth Cohen in)	
her official capacity as treasurer)	

**STATEMENT OF REASONS OF VICE CHAIR ALLEN DICKERSON AND
COMMISSIONERS SEAN J. COOKSEY AND JAMES E. "TREY" TRAINOR, III**

This matter presented the Commission with an unenviable problem. With only several weeks left on the statute of limitations and much work remaining, we were asked to resolve a novel and complicated legal question about the proper reporting of five-year-old financial transactions between these closely related Respondents. Proceeding would require expending significant staff time and agency funds in support of an uncertain legal theory, and the expedited timeline would potentially force Commissioners to authorize suit without the benefit of adequate deliberation. We concluded that pursuing such a plan would be an imprudent use of agency resources, and we voted instead to exercise the Commission's prosecutorial discretion and dismiss this matter.

* * *

The first Complaint in this matter was filed in 2017 and made several basic allegations against a series of related entities: American Bridge 21st Century Foundation ("AB Foundation"), a 501(c)(4) organization; American Bridge 21st Century ("AB PAC"), an independent-expenditure-only political action committee; and Correct the Record, a hybrid political action committee. First, the Complaint claimed that AB Foundation failed to properly register and report as a political committee. More specifically, it alleged that AB Foundation was evading federal disclosure requirements by accepting contributions earmarked for AB PAC and reporting transfers from AB Foundation as "operating expenses" under a common-paymaster arrangement, and that improper use of the common-paymaster arrangement resulted in inaccurate reports to the Commission and a failure to properly report debt by AB PAC to AB Foundation. Finally, it charged that Correct the Record failed to report rental of an email list.¹

¹ Complaint (Oct. 10, 2017), MUR 7284 (American Bridge 21st Century, *et al.*).

On March 12, 2019, the Commission found reason to believe AB PAC misreported debt, email list rental payments, and other receipts through the way it reported “reconciliation” transactions, including under its common-paymaster arrangement.² The Commission also found reason to believe Correct the Record misreported “reconciled” transactions with other entities, including reporting associated with email list rental.³ In support of these findings, the Commission authorized the Office of the General Counsel (“OGC”) to conduct an investigation.⁴

Following its investigation, OGC narrowed the allegations against the Respondents to two basic issues:

- OGC alleged that the common-paymaster arrangement between AB Foundation and AB PAC resulted in a reportable debt, and consequently, that AB PAC failed to report \$610,800 in debt to AB Foundation on its 2015 year-end report; and
- OGC maintained that AB PAC and Correct the Record misreported transactions associated with the rental and use of an email list, including AB PAC failing to report the transfer of the email list from AB Foundation to AB PAC, and Correct the Record misreporting a \$400,000 reconciliation between the two organizations that purportedly included a \$150,000 payment related to the email list.⁵

On December 23, 2020, OGC sent briefs to Respondents arguing they had violated the law. After receiving Respondents’ opposing briefs, OGC recommended on February 3, 2021 that the Commission find probable cause to believe that AB PAC and Correct the Record violated the Act as described above. When the Commission considered OGC’s recommendations in executive session on March 11, we disagreed and voted to dismiss this matter as an exercise of the Commission’s prosecutorial discretion.⁶

We do not believe that pursuing this matter further is an effective use of Commission resources. First, it would have been burdensome—if not impossible—for the Commission to resolve this matter appropriately within the applicable statute of limitations.⁷ Under the Act, once the Commission finds probable cause to believe a violation has occurred, it must attempt to conciliate with the respondent for no less than thirty days.⁸ If it is unable to reach an agreement

² Certification (March 12, 2019), MUR 7284 (American Bridge 21st Century, *et al.*); Factual and Legal Analysis, MUR 7284 (American Bridge 21st Century, *et al.*).

³ *Id.*; Factual and Legal Analysis for Correct the Record, MUR 7284 (American Bridge 21st Century, *et al.*).

⁴ The Commission found no reason to believe that the Respondents violated the Federal Election Campaign Act of 1971, as amended (the “Act”) by misreporting earmarked contributions, among other alleged violations. Certification (March 12, 2019), MUR 7284 (American Bridge 21st Century, *et al.*).

⁵ Office of the General Counsel’s Notice to the Commission Following the Submission of Probable Cause Brief (February 3, 2021), MUR 7284 (American Bridge 21st Century, *et al.*) (OGC filed two notices for probable cause, one concerning AB PAC and one concerning Correct the Record.).

⁶ *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

⁷ *See* 28 U.S.C. § 2462.

⁸ 52 U.S.C. § 30109(a)(4).

after thirty days, only then would the Commission consider whether to file a civil enforcement suit.⁹

The underlying transactions in this matter took place in 2015. The Commission’s remaining jurisdiction was based on alleged misreporting on the Respondents’ 2015 year-end reports, which were filed in January of 2016. During the course of this matter, the Respondents agreed to toll the statute of limitations for ninety days, extending it to mid-to-late April 2021.

But because of the mandatory thirty-day period for conciliation, the practical reality was that the statute of limitations had nearly lapsed when the Commission first considered OGC’s probable-cause recommendation and whether to move forward with enforcement. Doing so would have required reallocating resources from other matters to prepare contingent litigation documents and undergoing expedited or abbreviated Commission deliberation outside of executive session. We do not believe that this would have been efficient or prudent, particularly while the Commission is still working through a backlog of other matters that accumulated while it lacked a quorum.¹⁰

This conclusion is only reinforced by the complexity of the issues presented. As OGC’s probable cause brief notes, “[n]either the Act nor Commission regulations expressly addresses how a political committee should report receipts, disbursements, or debt obligations relating to a common paymaster agreement as described above.”¹¹ Mindful of the Supreme Court’s admonition that “[w]here the First Amendment is implicated, the tie goes to the speaker,”¹² we believe that the Commission should tread lightly in pursuing enforcement actions in the face of questionable legal theories. This is particularly true where, as here, resolving the uncertainty implicates the relationship between the Act and other federal laws, such as the Internal Revenue Code.

Finally, the potential benefits of further enforcement action are not compelling. Pursuing this matter further would perhaps obtain a civil penalty and update the public record regarding the relationship between AB Foundation, AB PAC, and Correct the Record. But AB Foundation and AB PAC already share a name, the public record already reflects that AB Foundation, AB PAC, and Correct the Record are all related organizations that operate under a common-paymaster arrangement, and all of the transactions at issue are already reported in one form or another as transactions between these related organizations on their FEC disclosure reports. The marginal value of further defining these transactions five years and two presidential elections after the fact is therefore low, especially as it relates to a defunct organization.¹³

⁹ 52 U.S.C. § 30109(a)(6).

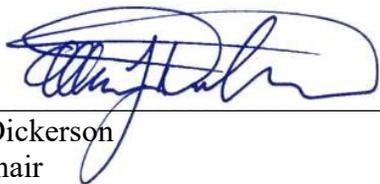
¹⁰ Statement of Commissioner Ellen L. Weintraub on the Senate’s Votes to Restore the Federal Election Commission to Full Strength (Dec. 9, 2020), *available at* <https://www.fec.gov/resources/cms-content/documents/2020-12-Quorum-Restoration-Statement.pdf>.

¹¹ General Counsel’s Brief at 9 (AB PAC) (Dec. 23, 2020), MUR 7284 (American Bridge 21st Century, *et al.*).

¹² *FEC v. Wisc. Right to Life, Inc.*, 551 U.S. 449, 474 (2007).

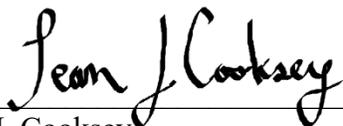
¹³ According to Respondents, Correct the Record is “defunct and awaits Commission termination,” with no cash on hand. Respondents’ Brief at 3 (Jan. 7, 2021), MUR 7284, (American Bridge 21st Century, *et al.*).

Considering the foregoing issues, we concluded that pursuing this matter further was not an efficient use of Commission time and resources. Accordingly, we voted to exercise the Commission's prosecutorial discretion and dismiss this matter under *Heckler v. Chaney*.



Allen Dickerson
Vice Chair

April 16, 2021
Date



Sean J. Cooksey
Commissioner

April 16, 2021
Date



James E. "Trey" Trainor, III
Commissioner

April 16, 2021
Date