



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

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

**STATEMENT OF REASONS OF
COMMISSIONER ELLEN L. WEINTRAUB**

This matter involves alleged reporting errors arising out of various 2015 transactions between three related entities. They are an independent-expenditure-only political committee, AB PAC (formerly known as American Bridge 21st Century) (“AB PAC”); a section 501(c)(4) corporation, American Bridge 21st Century Foundation (“AB Foundation”); and a hybrid political committee, Correct the Record (“CTR”). After investigating these allegations, the Commission voted to dismiss this matter as an exercise of prosecutorial discretion.¹ I write to explain my reasons for so doing.

A number of circumstances militated against taking further action in this matter.

First, the reporting violations occurred in 2015. Second, AB PAC fairly contended that neither the Federal Election Campaign Act, as amended (the “FECA”) nor Commission regulations provide clear and specific guidance on the debt reporting obligation resulting from AB Foundation’s pre-payment of shared salary and overhead expenses. Moreover, the sole basis for the allegations as to the other reporting violations (concerning the reporting by both AB PAC and

¹ See Certification, MUR 7284 (AB PAC) (Mar. 11, 2021); Certification, MUR 7284 (Correct the Record) (Mar. 11, 2021).

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CTR of the transfer of an email list) arose from confidential communications stolen by foreign state actors and published by WikiLeaks. In light of these factors, and the backlog of more significant cases facing the Commission due to its previous loss of a quorum, I voted to exercise prosecutorial discretion and dismiss this matter pursuant to *Heckler v. Chaney*.²

In April 2019, the Commission found reason to believe that AB PAC violated 52 U.S.C. § 30104(b) by: (1) failing to report a \$610,800 debt to the related AB Foundation in connection with its pre-payment of shared salary and overhead expenses, (2) failing to report an in-kind contribution from AB Foundation in connection with the latter's payment of \$150,000 to lease an email list that was provided to AB PAC, and (3) misreporting the purpose of a transfer to AB PAC from CTR to compensate AB PAC for the transfer of the email list. The Commission further found reason to believe that CTR violated 52 U.S.C. § 30104(b) by misreporting the purpose of its payment to AB PAC for the email list.³ OGC investigated this matter between 2019 and 2020, seeking information as to the circumstances of these transactions and whether there was a wider pattern of similar unreported transactions.⁴

On December 23, 2020, with the expiration of the statute of limitations looming, OGC sent AB PAC and CTR separate General Counsel's Briefs indicating it was prepared to recommend that the Commission find probable cause to believe that the respondents had violated the law. Specifically, the brief issued to AB PAC asserted that AB PAC violated 52 U.S.C. § 30104(b) by failing to report debt totaling \$610,800 owed to AB Foundation, failing to report

² 470 U.S. 821 (1985).

³ Certification, MUR 7284 (American Bridge 21st Century *et al*) (Apr. 24, 2019), and Factual and Legal Analyses, MUR 7284.

⁴ During the time that OGC was conducting its investigation, the Commission was without a quorum for most of the period from September 2019 to December 2020 and was thus unable to vote on matters or issue subpoenas.

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the receipt of the mailing list valued at \$150,000 from AB Foundation, and misreporting \$150,000 of a \$400,000 payment Correct the Record made to obtain the mailing list. The brief issued to the now-defunct CTR asserted that CTR violated 52 U.S.C. § 30104(b) by misreporting the purpose of the payments it made to AB PAC to obtain the mailing list.

On January 7, 2021, Respondents filed a Joint Reply Brief. The Reply Brief pointed out that there is no clear and specific guidance in the Act or regulations on the proper way to report debt obligations arising out of the pre-payment of shared salary and overhead expenses under a common paymaster agreement. Thus, the Reply Brief asked the Commission to dismiss the allegation as to AB PAC.⁵ The Reply Brief also noted that the information pertaining to the mailing list allegation originated from materials “illegally obtained by Russian military intelligence and provided to WikiLeaks.”⁶

The Respondents’ arguments are well taken. The WikiLeaks material was not merely illegally obtained, it was derived from “active measures” undertaken by a foreign government as part of “an aggressive, multifaceted effort to influence, or attempt to influence, the outcome of the 2016 presidential election.”⁷ As the agency charged with civil enforcement of the foreign national political spending ban, it would be particularly inappropriate for the FEC to base an enforcement action on material derived from a violation of this law.⁸ Previously, the Commission

⁵ Reply Brief, MUR 7284 (Jan. 7, 2021) at 8.

⁶ *Id.* at 4.

⁷ Report 116-XX, On Russian Active Measures Campaigns and Interference in the 2016 U.S. Election, Select Committee on Intelligence, United States Senate, Vol. 5, at v.

⁸ See 52 U.S.C. 30121.

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has declined to consider such material, and I do so again here.⁹ For this reason, I voted to dismiss the allegations relating to the mailing list transactions pursuant to *Heckler v. Chaney*.

AB PAC's debt reporting issue appears to stem from a misunderstanding of its reporting obligations. As the Office of General Counsel acknowledged in its probable cause brief, the arcane issue of how to report the pre-payment of shared salary and overhead expenses under a common paymaster arrangement is not squarely addressed by the FECA or Commission regulations.¹⁰ In light of this lack of clarity, the fact that these reporting violations date back to 2015, and the backlog of more significant matters awaiting Commission resolution, I determined that pursuing this matter further would not be an efficient use of agency resources and voted to dismiss the remaining allegation pursuant to *Heckler v. Chaney*.

May 19, 2021

Date



Ellen L. Weintraub
Commissioner

⁹ See Statement of Reasons of Chair Ellen L. Weintraub in MURs 6940, 7097, 7146, 7160, and 7193 (Correct the Record, *et. al.*) at 6, dated Sept. 20, 2019; Statement of Reasons of Vice Chairman Matthew S. Petersen and Commissioner Caroline C. Hunter in MURs 6940, 7097, 7146, 7160 and 7193 (Correct the Record, *et. al.*) at 2 n.4, dated Aug. 21, 2019.

¹⁰ General Counsel's Brief at 9 (AB PAC) (Dec. 23, 2020), MUR 7284 (American Bridge 21st Century, *et al.*).