



FEDERAL ELECTION COMMISSION

Washington, D.C. 20463

1 **MEMORANDUM**

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3 **TO:** The Commission

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5 **FROM:** Lisa J. Stevenson
Acting General Counsel

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8 Charles Kitcher
9 Acting Associate General Counsel for Enforcement

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11 **BY:** Mark Allen *MA*
Assistant General Counsel

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14 Anne B. Robinson *ABR*
15 Attorney

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17 **SUBJECT:** MUR 7450 (AshBritt, Inc., *et al.*) – AshBritt’s Request for Pre-Probable Cause
18 Conciliation

19 On July 23, 2019, the Commission found reason to believe that AshBritt, Inc.
20 (“AshBritt”), a federal contractor, violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a) by
21 making a \$500,000 contribution to America First Action, Inc. and Jon Proch in his official
22 capacity as treasurer (“AFA”), an independent-expenditure-only committee.¹ The Commission
23 took no action at this time as to the allegations regarding AFA.² The Commission also approved
24 the use of compulsory process.³

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26 AshBritt has requested pre-probable cause conciliation and refused to provide discovery
27 responses beyond the record set forth in the Commission’s Factual and Legal Analysis. As
28 discussed below, we recommend that the Commission deny the request because it appears to be
29 an effort to prevent the Commission from learning what happened and AshBritt has refused to
30 provide tolling despite knowing that the Commission lacks a quorum such that it could approve a
31 conciliated resolution of the matter.

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¹ Certification, MUR 7450 (AshBritt, Inc.) (July 24, 2019).

² *Id.*

³ Certification, MUR 7450 (AshBritt, Inc.) (July 29, 2019).

1 On August 9, 2019, we notified counsel for AshBritt, by email and mail, of the
2 Commission's reason to believe findings and enclosed Requests for Written Answers and
3 Production of Documents ("informal discovery"). On August 21, 2019, we received a letter and
4 designation from new counsel requesting that the Commission enter into pre-probable cause
5 conciliation with AshBritt and "stay" the informal discovery responses that were due on
6 September 9, 2019.⁴ Counsel's letter did not offer to share information with the Commission
7 that would clarify the factual record, nor did it offer to admit liability in a conciliation
8 agreement.⁵ Instead, the letter indicated that counsel was prepared to contest the Commission's
9 findings.⁶

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11 On September 5, 2019, we responded by email explaining that entering into pre-probable
12 cause conciliation at this time would be premature.⁷ We noted that we would need additional
13 information before we could consider recommending that the Commission enter into pre-
14 probable cause conciliation.⁸ We also noted that counsel's August 21 letter said that AshBritt
15 contested the Commission's findings, which we understood to mean that AshBritt would not sign
16 a Conciliation Agreement admitting it violated the Federal Election Campaign Act of 1971, as
17 amended (the "Act").⁹

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19 Counsel for AshBritt responded by letter stating that "the decision of whether to
20 conciliate . . . rests solely with the Commission, not staff in OGC" and characterizing as
21 erroneous the "notion that an admission of a legal violation is a necessary condition for
22 conciliation."¹⁰ The letter further stated that "though we understand OGC will likely make a
23 negative recommendation to the Commission, Ashbritt [sic] will await a formal vote from the
24 Commission to its conciliation request before responding to the Requests for Written Answers
25 and Production of Documents."¹¹ To date, AshBritt has not responded to our informal discovery
26 or the Commission's reason to believe findings even as we have continued to request that it do
27 so.
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4 Letter from Benjamin Ginsberg, counsel for AshBritt, to Anne Robinson, FEC (August 21, 2019).

5 *Id.*

6 *Id.*

7 Email from Anne Robinson, FEC, to Benjamin Ginsberg, counsel for AshBritt (Sept. 5, 2019). Although AshBritt's counsel notes that it first requested pre-probable cause conciliation ten days before the Commission lost its quorum, the OGC staff attorney assigned to this matter notified AshBritt's counsel on August 23, 2019, that she would be out of the office the week of August 26 and follow up with him when she returned to the office during the week of September 3, 2019.

8 *Id.*

9 *Id.*

10 Letter from Benjamin Ginsberg, counsel for AshBritt, to Anne Robinson, FEC (Sept. 6, 2019).

11 *Id.*

1 On September 25, 2019, we asked AshBritt’s counsel to clarify whether AshBritt was
2 continuing to request that the Commission enter into pre-probable cause conciliation despite the
3 Commission’s lack of quorum, and, if so, whether AshBritt would agree to toll the statute of
4 limitations until the Commission regains a quorum.¹² We further explained that the Commission
5 typically seeks an admission of a violation of the Act during pre-probable cause conciliation, in
6 addition to information that will expand and clarify the record.¹³ We requested that counsel
7 confirm whether AshBritt would maintain its position that it would not provide an admission nor
8 additional information.¹⁴

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10 On October 1, 2019, AshBritt’s counsel sent a short response stating that AshBritt:

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12 confirms its request under 11 C.F.R. § 111.18 that the Commission vote to enter
13 into pre-probable cause conciliation negotiations in order to bring an efficient end
14 to this matter. AshBritt will await the Commission vote to which is it entitled
15 before taking any further action in this matter, and sees no reason for a tolling
16 agreement.¹⁵

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18 We recommend that AshBritt’s request for pre-probable cause conciliation be denied.
19 AshBritt has provided no additional information to the Commission since the reason to believe
20 findings and has refused to respond to informal discovery pending a vote that cannot be
21 completed while the Commission lacks a quorum. As we noted in the First General Counsel’s
22 Report, we are investigating whether the \$500,000 disbursed from AshBritt’s account belonged
23 to AFA or AshBritt Chairman Randall Perkins at the time the contribution was made.¹⁶ We are
24 seeking targeted information regarding AshBritt’s bylaws as it relates to AshBritt’s
25 “loan/distribution accounts” and information regarding Perkins’s authority to “charge” such an
26 expense to his “loan/distribution account,” in addition to documentation of the purported
27 “charge” to the account.¹⁷

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29 Further, Perkins’s statements recently reported in the media are consistent with our
30 recommendations in the First General Counsel’s Report and the Commission’s decision to
31 investigate this matter. We noted in the First General Counsel’s Report that “the proposed
32 investigation would examine the circumstances of the contribution and may provide information

¹² Letter from Anne Robinson, FEC, to Benjamin Ginsberg, counsel for AshBritt (Sept. 25, 2019).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Letter from Benjamin Ginsberg, counsel for AshBritt, to Anne Robinson, FEC (Oct. 1, 2019).

¹⁶ First Gen. Counsel’s Rpt. at 9.

¹⁷ *Id.*

1 regarding any knowledge on the part of AFA”¹⁸ In a *ProPublica* article that was published
2 in October 2019, Perkins is quoted as saying: “When I wrote the check, I cleared it with
3 America First [Action].”¹⁹ This statement is in tension with AFA’s Response to the Complaint,
4 in which it stated that it had “no knowledge Ashbritt [sic] is a federal government contractor”
5 when it originally reported AshBritt as the contributor and that Perkins “subsequently informed”
6 the committee that Perkins “used his personal funds for the contribution.”²⁰

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8 The conclusory points set forth in AshBritt’s correspondence are not well taken and
9 generally appear to be aimed at preventing the Commission from clarifying the record as to the
10 factual matters described above. In addition, AshBritt has reaffirmed its request to conciliate
11 despite being aware that the Commission is lacking sufficient members to do so, while at the
12 same time refusing to provide tolling. Pursuant to the available information, the statute of
13 limitations in this matter begins to run on April 11, 2023. Accordingly, we recommend that the
14 Commission reject AshBritt’s request to enter into pre-probable cause conciliation. In the
15 meantime, we intend to continue our investigation.

16 **RECOMMENDATION:**

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- 18 1. Reject AshBritt’s request to enter into pre-probable cause conciliation; and
 - 19 2. Approve the appropriate letter.
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¹⁸ *Id.* at 8-9.

¹⁹ Mike Spies, Derek Willis, and J. David McSwane, *The Pro-Trump Super PAC at the Center of the Ukraine Scandal Has Faced Multiple Campaign Finance Complaints*, PROPUBLICA (Oct. 18, 2019), <https://www.propublica.org/article/the-pro-trump-super-pac-at-the-center-of-the-ukraine-scandal-has-faced-multiple-campaign-finance-complaints>.

²⁰ AFA Resp. at 1 (Sept. 25, 2018).