



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 **BY:** Charles Kitcher *CK*
Acting Associate General Counsel for Enforcement

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11 Stephen Gura *SG*
Deputy Associate General Counsel for Enforcement

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14 Mark Allen *MA*
Assistant General Counsel

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17 Anne B. Robinson *ABR*
Attorney

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20 **SUBJECT:** MUR 7450 (AshBritt, Inc., *et al.*) – Circulation of Discovery Documents

21 On July 23, 2019, the Commission found reason to believe that AshBritt, Inc.
22 (“AshBritt”), a federal contractor, violated 52 U.S.C. § 30119(a)(1) and 11 C.F.R. § 115.2(a) by
23 making a \$500,000 contribution to America First Action, Inc. and Jon Proch in his official
24 capacity as treasurer (“AFA”), an independent-expenditure-only committee.¹ The Commission
25 also approved the use of compulsory process.² We notified AshBritt of the Commission’s
26 findings and provided it with informal discovery requests.³

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28 We seek these subpoenas because AshBritt has refused to provide responses to the
29 informal discovery requests.⁴ In lieu of responding to the requests, AshBritt asked that the
30 Commission enter into pre-probable cause conciliation.⁵ We communicated with AshBritt’s

¹ Certification, MUR 7450 (AshBritt, Inc.) (July 24, 2019). The Commission took no action at this time as to the allegations regarding AFA. *Id.*

² Certification, MUR 7450 (AshBritt, Inc.) (July 29, 2019).

³ Letter to Michael W. Moskowitz, Counsel for AshBritt, from Chair Ellen L. Weintraub (Aug. 9, 2019). AshBritt subsequently submitted a new Designation of Counsel form on August 21, 2019.

⁴ *Id.*

⁵ Letter from Benjamin Ginsberg, counsel for AshBritt, to Anne Robinson, FEC (August 21, 2019).

1 counsel about its request, seeking to resolve the issues raised, but counsel provided no assurances
2 that AshBritt would be willing to admit to any violation of the Act or provide information
3 necessary to clarify the factual record prior to conciliation.⁶ AshBritt also refused to provide
4 tolling of the statute of limitations in connection with its request despite the Commission lacking
5 a quorum. We recommended that the Commission reject AshBritt's request for pre-probable
6 cause conciliation in a Memorandum dated October 24, 2019.

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8 The investigation in this matter is intended to assess whether the \$500,000 disbursed
9 from AshBritt's account belonged to AshBritt or AshBritt Chairman Randal Perkins at the time
10 the contribution was made.⁷ In its Response to the Complaint, AshBritt asserted that the
11 contribution was charged to Perkins's "loan/distribution account" but did not substantiate its
12 assertion.⁸ We are seeking targeted information regarding AshBritt's bylaws as it relates to
13 AshBritt's "loan/distribution accounts" and information regarding Perkins's authority to
14 "charge" such an expense to his "loan/distribution account," in addition to documentation of the
15 purported "charge" to the account, in addition to a copy of the check issued to AFA, any
16 documents (*i.e.*, cover letter) enclosed with the check, and any communications regarding the
17 contribution.⁹ We are also requesting a copy of the canceled check from AFA's bank, Chain
18 Bridge Bank.

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20 We recommend using compulsory process at this time given the resistance of AshBritt to
21 provide the information and documents we requested. We are concerned that further delays in
22 our investigation may result in the unavailability of documents and information that would
23 clarify the factual record. Accordingly, we request that the Commission approve the attached
24 subpoenas.

25
26 Attachments:

- 27 1. Order to Submit Written Answers and Subpoena to Produce Documents directed to
28 AshBritt, Inc.; and
29 2. Order to Submit Written Answers and Subpoena to Produce Documents directed to
30 Chain Bridge Bank.

⁶ See, e.g., Letter to Anne Robinson, FEC, from Benjamin L. Ginsberg, Counsel for AshBritt (Aug. 21, 2019) (requesting pre-probable cause conciliation but noting that they "believe the decision reached by the Commission in its Factual & Legal Analysis was wrong and are prepared to contest it"); Email to Benjamin L. Ginsberg, Counsel for AshBritt, from Anne B. Robinson, FEC (Sept. 5, 2019) (explaining the need for additional information and noting that AshBritt does not appear to be willing to admit to a violation of the Act); Letter to Anne Robinson, FEC, from Benjamin L. Ginsberg, Counsel for AshBritt (Sept. 6, 2019) (disagreeing with the idea "that an admission of a legal violation is a necessary condition for conciliation"); Letter to Benjamin L. Ginsberg, Counsel for AshBritt, from Anne B. Robinson, FEC (Sept. 25, 2019) (reiterating that AshBritt's request is premature and explaining the need for additional information to "expand and clarify the factual record").

⁷ First Gen. Counsel's Rpt. at 9.

⁸ Factual & Legal Analysis at 5-6.

⁹ *Id.*; First Gen. Counsel's Rpt. at 9.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 7450
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ORDER TO SUBMIT WRITTEN ANSWERS
SUBPOENA TO PRODUCE DOCUMENTS

TO: AshBritt, Inc.
c/o Benjamin L. Ginsberg, Esq.
Jones Day
51 Louisiana Avenue NW
Washington, DC 20001

Pursuant to 52 U.S.C. § 30107(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 1050 First Street, NE, Washington, DC 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, DC on this ____ day of _____, 2020.

On behalf of the Commission,

James E. "Trey" Trainor III
Chair

ATTEST:

Laura Sinram
Acting Secretary and Clerk of the Commission

Attachments
Instructions and Definitions
Questions and Document Requests

INSTRUCTIONS

1. In answering these questions and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.
2. Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.
3. The response to each question propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the response.
4. If you cannot answer the following questions in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.
5. Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.
6. Mark each page with identification and consecutive document control numbers (i.e., Bates numbers). Provide a master list showing the name of each person from whom responsive documents are submitted and the corresponding consecutive document control numbers used to identify that person's documents.
7. The discovery requests shall refer to the time period from January 1, 2018 to the present.
8. The following questions and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.
9. All responses must be submitted under oath or affirmation under penalty of perjury, including any response that you have no responsive documents.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

1. “You” or “AshBritt” shall mean AshBritt, Inc., including any officers, employees, agents, consultants, representatives, or other individuals acting for or on its behalf.
2. “Person” shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization, group, or entity.
3. “Document” shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term “document” includes, but is not limited to, books, letters, electronic mail, social media postings, messages sent via Twitter, instant messages, text messages, contracts, notes, diaries, log books, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders, wire transfers, or other commercial paper, financial records, calendar entries, appointment records, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained. If the document request calls for a document that is maintained on or in a magnetic, optical, or electronic medium (for example, but not limited to, computer hard drive, USB drive, or CD-ROM), provide both “hard” (i.e., paper) and “soft” (i.e., in the magnetic or electronic medium) copies, including drafts, and identify the name (e.g., Microsoft Word for Windows, WordPerfect) and version numbers of the software by which the document(s) will be most easily retrieved.
4. “Identify” with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, and the number of pages comprising the document.
5. “Identify” with respect to a person shall mean state the full name, the most recent business and residential addresses and the corresponding telephone numbers, email addresses, the present occupation or position of such person, the occupation or position of such person during the relevant time period, and the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

6. “And” as well as “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.
7. “Communication” shall be deemed to include both singular and plural, and to include written, oral, telephonic and electronic communications.

QUESTIONS AND DOCUMENT REQUESTS

1. Produce all documents and other information relating to the \$500,000 check or wire transfer issued by AshBritt to America First Action, Inc. in or about April 2018 (“AshBritt Contribution”), including, but not limited to:
 - a. a copy of the AshBritt Contribution, front and back, and any documents enclosed with it when it was sent to America First Action, Inc.;
 - b. copies of all communications between Randal Perkins or any other officer, employee, representative, or agent of AshBritt and any officer, employee, consultant, representative, or agent of America First Action, Inc. relating to the AshBritt Contribution;
 - c. copies of all communications between and among employees of AshBritt related to the AshBritt Contribution;
 - d. copies of written communications not already provided in response to Requests 1.a, 1.b, and 1.c above;
 - e. the substance of oral communications not already provided in response to Requests 1.b, 1.c, and 1.d above;
 - f. bank statements of AshBritt related to the AshBritt Contribution.

2. Produce all documents and other information supporting the statement in AshBritt’s response to the Complaint in MUR 7450 that the AshBritt Contribution was “charged to Mr. Perkins’s personal loan/distribution account,” including, but not limited to:
 - a. copies of all communications between Randal Perkins or any other officer, employee, representative, or agent of AshBritt and any officer, employee, consultant, representative, or agent of America First Action, Inc.;
 - b. copies of all communications between and among employees of AshBritt;
 - c. copies of written communications not already provided in response to Requests 2.a and 2.b above;
 - d. the substance of oral communications not already provided in response to Requests 2.a, 2.b, and 2.c above; and
 - e. bank statements of AshBritt related to the AshBritt Contribution and bank or other statements relating to “Mr. Perkins’s personal/distribution account” and the AshBritt Contribution.

3. Produce any AshBritt document including, but not limited to, by-laws, minutes of corporate meetings, corporate resolutions, or policies that provided that, at the time the AshBritt Contribution was made, Randal Perkins had the authority to charge a personal political contribution to his AshBritt loan and distribution account.
4. Provide the name, telephone numbers, residential addresses, and email addresses of each AshBritt employee appearing in any document provided or otherwise named in a response to the requests above, and include the employee's title, duties, and responsibilities.
5. Provide the names, telephone numbers, residential addresses, email addresses, and title of the person(s) providing information responsive to these requests.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 7450
)

ORDER TO SUBMIT WRITTEN ANSWERS
SUBPOENA TO PRODUCE DOCUMENTS

TO: Chain Bridge Bank
Attn: Betsy Sharon
1445-A Laughlin Avenue
McLean, VA 22101-5737

Pursuant to 52 U.S.C. § 30107(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 1050 First Street, NE, Washington, DC 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena, or within 15 days of your receipt of the Commission’s Certification of Compliance with the Right to Financial Privacy Act if the documents pertain to a personal account. Legible copies which, where applicable, show both sides of the documents may be substituted for originals. Please notify Anne B. Robinson, the attorney assigned to this matter, at (202) 694-1356 or arobinson@fec.gov before incurring any costs associated with your response to this Order and Subpoena for which you may seek reimbursement.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, DC on this ____ day of _____, 2020.

On behalf of the Commission,

James E. “Trey” Trainor III
Chair

ATTEST:

Laura Sinram
Acting Secretary and Clerk of the Commission

Attachments
Instructions and Definitions
Questions and Document Requests

INSTRUCTIONS

1. In answering these questions and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.
2. Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.
3. The response to each question propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the response.
4. If you cannot answer the following questions in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.
5. Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.
6. Mark each page with identification and consecutive document control numbers (i.e., Bates numbers). Provide a master list showing the name of each person from whom responsive documents are submitted and the corresponding consecutive document control numbers used to identify that person's documents.
7. The discovery requests shall refer to the time period from January 1, 2018 to the present.
8. The following questions and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.
9. All responses must be submitted under oath or affirmation under penalty of perjury, including any response that you have no responsive documents.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

1. “You” shall mean Chain Bridge Bank, to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.
2. “America First Action, Inc.” shall mean the independent-expenditure-only political committee registered in that name with the Federal Election Commission, or any organization with a substantially similar name, and shall include the organization’s employees, officers, agents, and volunteers, including but not limited to Jon Proch either in his official capacity as treasurer or otherwise doing business as America First Action, Inc. Further identifying information in the Commission’s possession includes the address at 1400 Crystal Drive, Suite 850, Arlington, Virginia, 22202.
3. “Person” shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.
4. “Document” shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term “document” includes, but is not limited to, books, letters, electronic mail, social media postings, messages sent via Twitter, instant messages, text messages, contracts, notes, diaries, log books, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, financial records, calendar entries, appointment records, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained. If the document request calls for a document that is maintained on or in a magnetic, optical, or electronic medium (for example, but not limited to, computer hard drive, USB drive, or CD-ROM), provide both “hard” (i.e., paper) and “soft” (i.e., in the magnetic or electronic medium) copies, including drafts, and identify the name (e.g., Microsoft Word for Windows, WordPerfect) and version numbers of the software by which the document(s) will be most easily retrieved.
5. “Identify” with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, and the number of pages comprising the document.
6. “Identify” with respect to a person shall mean state the full name, the most recent business and residential addresses and the corresponding telephone numbers, email addresses, the present occupation or position of such person, the occupation or position of such person during the relevant time period, and the nature of the connection or

association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

7. “And” as well as “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.
8. “Communication” shall be deemed to include both singular and plural, and to include written, oral, telephonic and electronic communications.

QUESTIONS AND DOCUMENT REQUESTS

1. For all accounts for which America First Action, Inc., or any variation of that name, is or was an account holder from January 1, 2018 through the present, identify the person(s) who opened the account(s) and all persons authorized to access the account(s) and the funds held within, including names, addresses, phone numbers, and email addresses.

2. For each account identified in response to Question 1, identify and produce all documents and other information relating to the \$500,000 check or wire transfer issued by Ashbritt, Inc. to America First Action, Inc., or any variation of those names, in or about April 2018 (“Ashbritt Contribution”), including, but not limited to:
 - a. a copy of the canceled Ashbritt Contribution, front and back, and any documents enclosed with the check or wire transfer when it was sent to you;
 - b. bank statements of America First Action, Inc. related to the Ashbritt Contribution;
 - c. deposit tickets for the deposit of the AshBritt Contribution made to the account, or any record of deposits or credits made to the account; and
 - d. records of all incoming and outgoing transfers of funds made to or from the account(s) and AshBritt, Inc. or Randal Perkins.