

October 9, 2017

Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: The Citizens Audit, LLC Complaint to Federal Election Commission
concerning: American Bridge 21st Century Foundation,
American Bridge 21st Century, and Correct the Record

Dear Sirs:

The Citizens Audit, LLC is an educational and media organization incorporated in North Carolina, with its principal place of business in Monroe, North Carolina. It operates the website www.thecitizensaudit.com, which contains additional information about the matters discussed in this complaint.

The Citizens Audit, LLC submits the following Complaint against:

- American Bridge 21st Century Foundation (“AB Foundation”),
- American Bridge 21st Century (“AB Super PAC”), and
- Correct the Record (“CR Hybrid PAC”).

AB Foundation and AB Super PAC are hereinafter jointly referred to as “the AB respondents.”

AB Foundation, AB Super PAC, and CR Hybrid PAC are hereinafter jointly referred to as “the three respondents” or simply “the respondents.”

This Complaint and its attachments set out the basis for the belief of The Citizens Audit that the three respondents, separately and/or jointly, have engaged in violations of the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30101, *et seq.* (also referred to as “FECA” or “the Act”), and the implementing regulations adopted by the Federal Election Commission (“Commission” or “FEC”) and published at 11 C.F.R.

FECA provides that, if the Commission, upon receiving a complaint, has reason to believe that a person has committed a violation of the Act, it shall make an investigation of the alleged violation. *See* 52 U.S.C. § 30109(a)(2). This Complaint is filed pursuant to 52 U.S.C. § 30109(a)(1), with the request that the FEC conduct an investigation into whether the respondents' conduct violated federal campaign finance laws during the time in question and, if so, that it impose appropriate sanctions, as well as take whatever further action is appropriate and in accordance with the law.

This Complaint, including the following allegations, is based upon such knowledge, information, and belief as stated below and as contained in the identified attachments. The relevant facts and alleged offenses are summarized as follows:

RESPONDENTS

1. AB Foundation is a nonprofit corporation organized under the laws of the District of Columbia, and the IRS has deemed it to be exempt from federal income taxation as a social welfare organization under section 501(c)(4) of the Internal Revenue Code ("IRC").¹ *See, e.g.*, Exhibit A (AB Foundation's 2015 IRS Form 990).

AB Foundation's mission is said to be, "to compare and contrast progressive and conservative solutions to America's public policy concerns and to educate the American people and the Nation's leaders on the results of that research." *Id.*, p. 2 (Part III, l. 1).

¹ The name American Bridge 21st Century Foundation can be misleading, as the word "Foundation" is typically used by public charities or private foundations exempt from federal income tax under IRC section 501(c)(3), but AB Foundation is tax-exempt under IRC section 501(c)(4).

AB Foundation engages in substantial political activities. *See, e.g., id.*, 2015 Schedule C (Form 990 or 990-EZ) (“Political Campaign and Lobbying Activities”) (reporting 2015 electoral exempt function expenditures (under IRC § 527(e)(2)) of \$412,866). *See, e.g.*, Exhibit B (AB Foundation’s 2014 IRS Form 990) Schedule C (Form 990 or 990-EZ) (“Political Campaign and Lobbying Activities”) (reporting 2014 electoral exempt function expenditures (under IRC § 527(e)(2)) of \$800,149). Moreover, AB Foundation appears to expend funds on political activities by funding the operations of AB Super PAC through a “common paymaster” arrangement. Such an arrangement was not reported on AB Foundation’s 2015 and 2014 Form 990, but the AB Foundation 2012 Form 990 stated: “The organization has entered into a cost sharing agreement with American Bridge 21st Century, an affiliated 527 organization, to share employees via a common paymaster arrangement, office space and other resources.” *See, e.g.*, Exhibit C (AB Foundation’s 2012 IRS Form 990) (This arrangement is discussed further in Count I, *infra.*)

2. AB Super PAC is a political organization under IRC section 527, and is registered with the FEC as a political committee² dedicated exclusively to conducting independent expenditures in support of or in opposition to federal candidates — a so-called “Independent Expenditure-Only Committee” or “Super PAC.”

3. CR Hybrid PAC is a political organization under IRC section 527 and is registered with the FEC as a political committee, operating as a hybrid PAC.³ *See* CR Hybrid PAC FEC Form 1 (Statement of Organization) filed on June 5, 2015.

² FEC Identification Number C00492140.

³ FEC Identification Number C00578997.

<http://docquery.fec.gov/pdf/085/15031431085/15031431085.pdf>. However, CR Hybrid PAC made only \$4,535.73 in “Operating Expenditures,” compared to \$9,613,242.55 in “Other Disbursements,” from 2015-2016.

CR Hybrid PAC reportedly had been a project of AB Super PAC until May 2015, when CR Hybrid PAC announced that it was separating from its parent organization to become a stand-alone political committee. CR Hybrid PAC filed its initial FEC Form 1 with the FEC on June 5, 2015 (Exhibit D hereto). Also reportedly, CR Hybrid PAC worked closely with the Hillary Clinton campaign during the 2016 federal election cycle. *See, e.g.*, “Hacked Emails Prove Coordination Between Clinton Campaign and Super PACs,” October 18, 2016.⁴

4. AB Foundation, AB Super PAC, and CR Hybrid PAC all have their offices at, and operate from, the same business address: 455 Massachusetts Avenue, N.W., Sixth Floor, Washington, D.C. 20001. Several other organizations, also list 455 Massachusetts Avenue, N.W., Sixth Floor, Washington, D.C. 20001 as their respective business addresses. Included among these other entities are:

- Media Matters for America;
- Media Matters Action Network;
- The Franklin Educational Forum;
- The Franklin Forum;
- Franklin Strategies, LLC;
- The American Independent;
- Citizens for Responsibility and Ethics in Washington Inc
- The Bonner Group, Inc;
- American Democracy Legal Fund.⁵

⁴ *See, e.g.*, <https://theintercept.com/2016/10/18/hillary-superpac-coordination/>.

⁵ Further information about these organizations, and their FEC ID or Employee Identification Numbers, are set out in an article at: <http://www.thecitizensaudit.com/2017/10/09/media-matters-shared-office-space/>.

ISSUE I

5. During 2013-2017, and perhaps beginning earlier, AB Foundation and AB Super PAC implemented procedures which appear to have resulted in the evasion of the requirements of federal law requiring the disclosure of contributors to AB Super PAC by establishing a system whereby contributions earmarked for or intended for AB Super PAC would be made in the first instance to AB Foundation and then transferred by AB Foundation to AB Super PAC as purported operating expenses (such as “Overhead & Staff Expenses”) pursuant to a “common paymaster” arrangement. AB Foundation’s “common paymaster” arrangement was disclosed/explained in the following documents:

- AB Foundation 2011 Form 990, Schedule O (March 2, 2011 – June 30, 2011);
- AB Foundation 2011 Form 990, Schedule O (July 1, 2011 – June 30, 2012); and
- AB Foundation 2012 Form 990, Schedule O.

However, AB Foundation’s “common paymaster” arrangement was **not** disclosed/explained in:

- AB Foundation 2013 Form 990 Schedule O;
- AB Foundation 2014 Form 990 Schedule O; and
- AB Foundation 2015 Form 990 Schedule O.

6. The common paymaster arrangement apparently operates based on the view that AB Foundation and AB Super PAC are related organizations for purposes of the common paymaster arrangement, although the organizations do not identify themselves to be related organizations under IRS Form 990 regulations.

7. Certain contributions to AB Foundation apparently were earmarked or otherwise intended to benefit and/or to be transferred to AB Super PAC, allowing the evasion of the law requiring public disclosure or dissemination of information regarding contributions received by AB Super PAC. These procedures were carried out under a purported common paymaster arrangement that did not appear to accurately reflect the appropriate share of expenses incurred by each of the respective AB organizations.⁶ Designating AB Super PAC as the common paymaster appears to have opened the door for excessive payments from AB Foundation to AB Super PAC for purported “Overhead & Staff Expenses,” when such payments actually should have been treated as contributions to AB Super PAC. Thus, use of a common paymaster arrangement disguised indirect contributions from AB Foundation to AB Super PAC as operating expenses.

8. Evidence that the common paymaster arrangement adopted by the AB respondents was misused includes the following:

- (a) AB Foundation reported zero employees on its 2011 through 2015 IRS Forms 990 (*see, e.g.,* Exhibit A). Therefore, all work done by AB Foundation employees is reflected

⁶ A common paymaster arrangement between two or more related organizations, pursuant to 26 C.F.R. § 31.3121(s)-1, allows one of the related corporations to designate the other as the common paymaster. One paycheck can then be issued as compensation for work performed on behalf of both employers, and only one set of payroll taxes is due. Only a single IRS Form W-2 is issued to each worker, but each employer is responsible for reporting the wages that it actually funded on its own tax return. As a result, double employment tax payments are avoided. Corporations are considered by federal law to be related if, *inter alia*, 30 percent or more of one corporation’s employees are concurrently employees of the other corporation. Complainant believes that the AB respondents purport to justify their common paymaster arrangement as related organizations based upon that 30-percent provision, since they appear to deny being related based on common control or other relevant tests.

in compensation payments routed through the common paymaster. AB Foundation reports paying substantial employer portion payroll taxes on its 2011 through 2015 Form 990s, Part IV, Line 10.⁷

For the past several years, the activities of AB Super PAC appear to have been much greater than the activities of AB Foundation. However, payments by AB Foundation to AB Super PAC for employee compensation and taxes indicate that a greater share of activities and work of shared employees was done on behalf of AB Foundation. For example:

(i) During the period January 1, 2017 through June 30, 2017, AB Foundation's payments to AB Super PAC, which totaled \$2,800,000 — primarily to compensate the shared employees performing work on behalf of AB Foundation⁸ — constituted approximately 64.41 percent of AB Super PAC's expenditures of \$4,347,127, and constituted approximately 67.77 percent of AB Super PAC's total receipts for that period⁹;

⁷ AB Foundation reported employer portion Payroll Tax expenditures as follows:

- March through June 2011 Form 990: \$2,276;
- July - June 2012 Form 990: \$38,286;
- 2012 Form 990: \$56,395;
- 2013 Form 990: \$88,783;
- 2014 Form 990: \$80,199; and
- 2015 Form 990: \$154,330.

⁸ AB Super PAC FEC reports describe receipts from AB Foundation as "OVERHEAD & STAFF EXPENSES."

⁹ See AB Super PAC 2017 FEC Mid-Year Form 3X Report (1/1/17 through 6/30/17), filed July 29, 2017:

<http://docquery.fec.gov/pdf/482/201707299069852482/201707299069852482.pdf>.

(ii) During that same period, payments from AB Foundation to AB Super PAC is estimated to have accounted for 92.45 percent¹⁰ of all compensation expenditures made by AB Super PAC (*see id.*)¹¹;

(iii) Purported compensation to AB Foundation's employees (based upon payments by AB Foundation to AB Super PAC) constituted very high percentages — estimated to range from 12.53 to 92.45 percent — of total compensation payments from AB Super PAC to purported joint employees of AB Foundation and AB Super PAC during the period July 2012 to June 2017.¹²

¹⁰ The 92.45 percent figure comes from comparing 92.52 percent of AB Foundation's payments in the period (\$2,800,000.00) with AB Super PAC's reported compensation payments (\$2,800,837.74). The estimate was based on the pattern established in 2011 – 2015, where an estimated 92.52 percent of AB Foundation's shared expenditures with AB Super PAC were for employee compensation. Note also that AB Foundation shares some resources, facilities, and employees with AB Super PAC.

¹¹ According to David Brock — who is involved with both AB Foundation and AB Super PAC — the combined 2017 “core budget” of both groups is \$14.7 million, with an almost even (47 percent/53 percent) division of budget expenditures, respectively. *See* www.scribd.com/document/337535680/Full-David-Brock-Confidential-Memo-On-Fighting-Trump.

¹² For 2011 – 2015, AB Foundation's Forms 990 show the exact amount it disbursed in compensation, which is compared with the total compensation reported by AB Super PAC. Since AB Foundation's 2016 and 2017 Forms 990 are not available, the estimate for those years was based on the pattern established in 2011 – 2015, where an estimated 92.52 percent of AB Foundation's shared expenditures with AB Super PAC were for employee compensation. Complainant (using publicly available documents such as FEC reports and IRS Forms 990) estimated the percentage of AB Super PAC compensation attributed to AB Foundation, ranging from 7.41 percent to 92.45 percent, as follows: March 2011 – June 30, 2011: 7.41%; July 2011 – June 2012: 16.10%; July 2012 – June 2013: 31.91%; July 2013 – June 2014: 25.04%; July 2014 – December 2014: 45.55%; January 2015 – December 2015: 38.77%; January 2016 – December 2016: 12.53%; January 2017 – June 2017: 92.45%. **For this last period, compensation for AB Foundation employees truly dwarfed in size employee compensation for AB Super PAC employees.** For the method by which these percentages were derived, *see* <http://www.thecitizensaudit.com/2017/10/09/american-bridge-21st-century-cost-sharing-explainer/>.

(b) AB Foundation reported zero employees for both 2014 and 2015 in its Forms 990, but reported that more than 40 percent of its 2015 expenditures, and 62 percent of its 2014 expenditures, were for compensation including officers, directors, and key employees. *See* AB Foundation's 2015 IRS Form 990 (Exhibit A hereto), p. 10; and 2014 IRS Form 990 (Exhibit B hereto), p. 10.

(c) AB Foundation's contributions to AB Super PAC for "Overhead & Staff Expenses" (including officers, directors, and key employees) in 2014 through 2017 appear to be disproportionately high in light of AB Foundation's claimed program accomplishments for those years;

(d) AB Foundation's contributions to AB Super PAC of "Overhead & Staff Expenses" during 2014 through 2017, as reported in AB Super PAC's FEC Forms 3X, appear to be almost exclusively for compensation payments, as AB Foundation disbursed very little annually from 2011 through 2015 in occupancy and office expenses (\$85,524 – \$98,782 annually) compared to total employee compensation (\$567,777 - \$2,274,352 annually).

(e) AB Foundation's "Overhead & Staff Expenses" transfers to AB Super PAC during 2014 through 2017 were in gross amounts that do not appear to correlate to compensation payments that would have been made during these periods for work done on behalf of AB Foundation — a prime example being in 2017 where, during the period January 1, 2017 through June 30, 2017, an estimated 92 percent of all compensation payments by AB Super PAC were paid by AB Foundation to AB Super PAC for "Overhead & Staff Expenses" payments, but the vast majority of work done by AB Foundation and AB Super PAC during the first six months of 2017 appears to have been creating reports for

the “Trump Accountability Project,” which is substantially a project of AB Super PAC, and not AB Foundation.¹³ AB Foundation’s payments to AB Super PAC consisted of approximately 64.41 percent of AB Super PAC’s expenditures of \$4,347,127, and constituted approximately 67.77 percent of AB Super PAC’s total receipts for that period. However, the vast majority of all work done by **only AB Foundation** was for creating “Trump Accountability Reports.”

- (i) AB Super PAC (not AB Foundation) announced the creation of the so-called Trump Accountability Project, mentioned above, and the Trump Accountability Project reports contain the logo of AB Super PAC (not AB Foundation);
- (ii) AB Foundation published **61 Trump Accountability** “Policy Briefs” and **38 blog posts unrelated** to Trump Accountability reports during the period between January 1 and June 30, 2017, and thus, Trump Accountability reports consisted of **61.62 percent** of AB Foundation’s activities.
- (iii) AB Super PAC published **61 Trump Accountability reports** and **621 blog posts** during that 2017 time frame, and thus, Trump Accountability reports consisted of approximately 8.94 percent of AB Super PAC’s activities. *See* <https://americanbridgepac.org> and <https://bridgeproject.com>.
- (iv) AB Foundation’s payments to AB Super PAC consisted of approximately 64.41 percent of AB Super PAC’s total expenditures during that 2017 time frame.

¹³ *See, e.g.*, <https://americanbridgepac.org/david-brock-announces-american-bridge-trump-administration-accountability-war-room/>.

(f) AB Foundation’s “Overhead & Staff Expenses” transfers to AB Super PAC sometimes closely correlated with and sometimes were identical to the amounts of donations received by AB Foundation at or about the same time. *See, e.g.*, Exhibit E (AB Foundation’s 2013 IRS Form 990) and AB Foundation’s 2015 IRS Form 990 (Exhibit A hereto), the only two years that could be found with AB Foundation’s Schedule B list of contributors.

Note: Although the Complainant has no access to whatever records the AB respondents may possess — including, but not limited to, salary and wage reports, IRS Forms W-2 and 1099, and employee/wage allocation documents — purporting to explain the compensation payments to the joint employees of the AB respondents during the years in question, the FEC investigation could and should require the production and examination of such documentation.

9. AB Super PAC’s utilization of the common paymaster arrangement described *supra* may have violated the reporting requirements of 52 U.S.C. § 30104(b)(2) and (3), and 11 C.F.R. § 104.7 and 104.8. Further, the AB respondents’ utilization of the common paymaster arrangement may have violated other federal laws (*e.g.*, 18 U.S.C. § 371 (conspiracy to defraud the United States)).

ISSUE II

10. Respondent AB Foundation — by virtue of the utilization of the common paymaster arrangement described above in paragraphs 5-9 — appears to have made payments to respondent AB Super PAC that were not payments for “Overhead & Staff Expenses,” but were in fact

contributions used to fund political activities.¹⁴ If so, respondent AB Foundation acted — in its own stead or as a co-venturer with AB Super PAC — as a political committee, and was required to register and report its activities as such. For example, funding the preparation of the Trump Accountability Project reports, described *supra*, was for the purpose of funding political activities. *See* 52 U.S.C. §§ 30101(4), 30103(a); 11 C.F.R. § 100.5(a), 102.5, 104.3.¹⁵ A political committee's failure to register and report as a political committee violates FECA and FEC regulations.

ISSUE III

11. Improper utilization of the common paymaster arrangement described above in paragraphs 5-9 would result in incorrect reporting of contributions from AB Foundation to AB Super PAC as “Overhead & Staff Expenses.” Failure to correctly report contributions received appears to violate 52 U.S.C. § 30104(b) and 11 C.F.R. § 102.9, 104.7, 104.8. *See, e.g.*, Exhibit F hereto (AB Super PAC's 2015 January 31 Year-End Form 3X (7/1/15 through 12/31/15), as amended on August 31, 2016, pp. 1-5). This failure also would have resulted in any number of reporting violations by AB Super PAC, some of which are indicated above, and others of which may become manifest from the FEC's investigation. Employees of both AB Foundation and AB Super PAC should have been required to maintain detailed employee time records, and

¹⁴ AB Foundation, by virtue of such political expenditures, could also have exceeded the limitation of its permissible non-exempt political activities, calling its tax-exempt status under IRC section 501(c)(4) into question, as well as the accuracy of its IRS Forms 990 for 2014 and 2015 (and perhaps for other years) filed with the Internal Revenue Service.

¹⁵ There is no question about AB Foundation's familiarity with FEC filing requirements, having filed FEC Forms 5 (*i.e.*, a 24-Hour Notice, an amended 24-Hour Notice, and a Quarterly Report) during the 2012 federal election cycle. *See* <https://www.fec.gov/data/committee/C90012782/?cycle=2012> (ID C90012782).

procedures should have been put in place for the appropriate allocation of expenses by shared employees of both organizations.¹⁶

ISSUE IV

12. In its January 31 Year-End FEC Form 3X (7/1/15 through 12/31/15), as amended on August 31, 2016, AB Super PAC reported that it had no indebtedness to AB Foundation, while AB Foundation's 2015 Form 990 reported that AB Super PAC was indebted to AB Foundation in the amount of \$610,800. *Compare* Exhibit F hereto (AB Super PAC's 2015 January 31 Year-End Form 3X, Schedule D, p. 1062), *with* Exhibit A hereto (AB Foundation's 2015 Form 990, Schedule D, p. 3). AB Super PAC's 2015 Year-End FEC Form 3X makes no mention of such a loan, either on line 13 of the Detailed Summary Page or on Schedule D. *See* Exhibit F, Form 3X, pp. 3 and 1062.

13. The Complainant has not been able to uncover any reference to such indebtedness in subsequent FEC reports by AB Super PAC. Such indebtedness must be reported until it is extinguished. 11 C.F.R. § 104.11(a). AB Super PAC's duty under FECA and the FEC regulations to report such indebtedness is clear, and failure to report the indebtedness would be a clear violation of 52 U.S.C. § 30104(b)(2)(H), as well as 11 C.F.R. § 104.3(a)(vi) and 104.11(a).

ISSUE V

14. CR Hybrid PAC failed to report the receipt of a valuable email list received in late 2015. It appears that CR Hybrid PAC received use of the email list owned by Ready PAC,

¹⁶ AB Foundation's IRS Form 1024, filed May 21, 2013, represents that the organization "tracks its expenses, including through use of timesheets...." P. 37. *See* <https://www.documentcloud.org/documents/1201590-american-bridge-21st-century-1.html>.

formerly known as “Ready for Hillary PAC,”¹⁷ in late 2015. *See* attachment (titled “CTR Update.docx”) to email of M. Bonner, dated December 1, 2015, <https://wikileaks.org/podesta-emails/emailid/5636>. This attachment — a memorandum which, *inter alia*, recounted recent political efforts of CR Hybrid PAC — detailed the fact that CR Hybrid PAC had widely used the Ready PAC (formerly “Ready for Hillary PAC”) email list in late 2015:

SPREADING THE MESSAGE: Over 15,000 individuals receive Correctors emails, urging them to engage on social media to amplify Correct The Record’s message in real time as an online rapid-response team. Correct The Record has also sent emails to the larger Ready for Hillary list, which have been consumed more than 400,000 times. [Memorandum at 3.]

The Complainant, having searched the FEC reports filed by CR Hybrid PAC, has been unable to discover any FEC report filed by CR Hybrid PAC reporting receipt or use of the value of the email list or otherwise recognizing use of the list in any way. Assuming CR Hybrid PAC received the email list, failure to report the value of such a valuable in-kind contribution would appear to be a clear violation of federal law. *See* 52 U.S.C. § 30104(b); 11 C.F.R. § 102.9, 104.7, 104.8.

15. Depending on the content of these emails, CR Hybrid PAC may have failed to report independent expenditures with respect to the use of the email list in clear violation of the Act.

See 52 U.S.C. § 30104(b), (d), and (g); 11 C.F.R. § 104.4.

¹⁷ “Ready for Hillary PAC” was a Super PAC, registered in 2013, which was created to support the nomination of Hillary Clinton as the Democrat nominee in the 2016 presidential election. Subsequent to Hillary Clinton’s declaration of candidacy for the Democrat nominee for U.S. President, Ready for Hillary PAC changed its name to Ready PAC. *See* amended FEC Form 1 (Statement of Organization) filed on April 12, 2015 (FEC Identification Number C00540997).

CONCLUSION

Wherefore, Complainant The Citizens Audit, LLC prays that the Commission investigate these matters under 52 U.S.C. § 30109(a)(2) and find reason to believe of any violations of the Act and the FEC regulations, as set forth above. In addition, the Commission should determine and impose appropriate sanctions for any and all violations committed by the respondents, and should order such additional remedies as are appropriate and in accordance with law.

Respectfully submitted,

Andrew Kerr
President

Exhibits:

- Exhibit A – AB Foundation 2015 IRS Form 990
- Exhibit B – AB Foundation 2014 IRS Form 990
- Exhibit C – AB Foundation 2012 IRS Form 990
- Exhibit D – CR Hybrid PAC initial FEC Form 1, filed 6/5/15
- Exhibit E – AB Foundation 2013 IRS Form 990
- Exhibit F – AB Super PAC January 31 Year-End FEC Form 3X (7/1/15 through 12/31/15), amended 8/31/16, pp. 1-5, 1062)
- Exhibit G – AB Foundation 2011 Form 990, (July 1, 2011 – June 30, 2012)
- Exhibit H – AB Foundation 2011 Form 990, (March 2, 2011 – June 30, 2011)

VERIFICATION

I hereby declare, under penalty of perjury pursuant to 28 U.S.C. §1746, that the foregoing statements and allegations are true to the best of my knowledge, information, and belief.

Executed on October 9, 2017.

Andrew Kerr
President
The Citizens Audit, LLC
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