INTERNAL REVENUE SERVICE

In the matter of:

AMERICAN BRIDGE 21ST CENTURY FOUNDATION, TRUE BLUE MEDIA LLC, and DAVID BROCK.

MEMORANDUM IN SUPPORT OF TAX-EXEMPT ORGANIZATION REFERRAL

The Patriots Foundation submits this memorandum in support of the enclosed Form 13909, Tax-Exempt Organization Complaint (Referral), alleging that American Bridge 21st Century Foundation ("AB21CF") has engaged in serious and deliberate violations of the Internal Revenue Code of 1986, as amended ("IRC") and abused its tax-exempt status.

Specifically, as detailed below, AB21CF is not operated exclusively for an exempt-purpose; is operated primarily for political purposes; has participated in an impermissible excess benefit transaction with its founder David Brock and True Blue Media LLC; has provided an improper private benefit to Brock and True Blue; has used its income and assets for the personal gain of Brock; and has engaged in commercial, for-profit business activity through its investment in True Blue Media.

FACTS

True Blue Media, LLC was incorporated as a Delaware limited liability company on November 9, 2015.[1] It was formed by David Brock, a Democratic operative and Hillary Clinton supporter, for the purpose of acquiring Blue Nation Review, a left-wing political platform owned

[1] *See* Entity Details, Delaware Department of State: Division of Corporations (attached as Exhibit 1).

by an Australian company.[2] With the acquisition of Blue Nation Review, Brock planned to create "a focal point in liberal journalism," and a "reliable defender of and advocate for [Hillary] Clinton" during the 2016 campaign.[3] Under Brock's leadership, Blue Nation Review quickly earned a reputation as a "propaganda arm of Hillary Clinton's presidential" campaign, and did not hesitate to go after her political rivals, including Senator Bernie Sanders, who the site once "treated … as a liberal hero."[4]

As the 2016 campaign continued, Blue Nation Review rebranded itself as Shareblue Media and doubled-down on its aggressive support for Hillary Clinton.[5] Described in a 2016 New York Times articles as "the finger that wags at the mainstream news media … or pokes at individual reporters" and part of "the sprawling Clinton body politic," Shareblue Media launched an online campaign targeting anyone who disagreed with Hillary Clinton.[6] But beyond its partisan political agenda, Brock hoped that Shareblue would serve as a way to generate revenue and operate as a commercial enterprise.[7]

Media reports show that Brock intends to leverage his network of nonprofit organizations, including AB21CF—a nonprofit organization under section 501(c)(4)—to develop content for his commercial venture, Shareblue.[8] As Brock himself explained in Shareblue's 2020 Strategic Plan: "Shareblue will achieve financial sustainability while diversifying content offerings and

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[2] Marketwired, *Blue Nation Review & True Blue Media, LLC Transaction*, YAHOO! FINANCE (Nov. 25, 2015), https://www.yahoo.com/amphtml/finance/news/blue-nation-review-true-blue-133000087.html.
[3] Ryan Grim and Gabriel Arana, *Sale Of Blue Nation Review Gives Hillary Clinton Camp Its Very Own Media Outlet*, HUFFINGTON POST (Nov. 20, 2015), https://www.huffpost.com/entry/david-brock-blue-nation-review_n_564f0f3de4b0879a5b0a7bc5.
[4] Lloyd Grove, *Hillary Clinton's Hit Men Target Bernie Sanders At Blue Nation Review*, THE DAILY BEAST (March 7, 2016), https://www.thedailybeast.com/hillary-clintons-hit-men-target-bernie-sanders-at-blue-nation-review.
[5] Jason Horowitz, *Inside Hillary Clinton's Outrage Machine, Allies Push The Buttons*, N.Y. TIMES (Sept. 22, 2016), https://www.nytimes.com/2016/09/23/us/politics/hillary-clinton-media-david-brock.html.
[6] *Id.*
[7] Lachlan Markay, *David Brock Thinks Liberals Will Pay For His 'Twitter-Like' Website*, FREE BEACON (Jan. 25, 2017), https://freebeacon.com/politics/david-brock-thinks-liberals-will-pay-twitter-like-website.
[8] *Id.*

platforms."[9] More specifically, "Shareblue is positioned to frame opposition research from American Bridge and other progressive groups … and disseminate it directly to our followers in a daily online persuasion campaign."[10] Thus, it appears Brock intends to repurpose his network of nonprofit organizations for commercial, profit-making activity.

Additionally, in its 2017 Form 990, Return Of Organization Exempt From Income Tax, AB21CF disclosed a transfer of funds in the amount of $1,645,200 to True Blue Media, the entity that was formed to acquire Shareblue.[11] On Schedule I of the 2017 Form 990, this transfer of funds was characterized as a "grant." However, on Schedule L of AB21CF's 2017 Form 990, this transfer of funds was characterized as a business transaction with an interested person involving a transfer "to [True Blue Media] pursuant to a simple agreement for future equity."[12] The same transfer of funds cannot be both. Yet, in 2018, AB21CF disclosed a similar transfer of $1,070,001 to True Blue Media. Again, the transaction was listed on AB21CF's Form 990 as both a "grant" and a business transaction with an interested person "pursuant to a simple agreement for future equity."[13]

Both transfers, in 2017 and 2018, listed David Brock as an "interested person" for serving as both the founder of AB21CF and as a more than 35% owner of True Blue Media.[14] These transfers appears to represent an injection of nonprofit dollars into David Brock's for-profit commercial business venture, with no reciprocal benefit to AB21CF recorded on its Forms 990. The transfers are even more alarming because media reports indicate that Shareblue actually paid

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[9] *See* Democracy Matters Strategic Plan for Action, Introduction at pg. 3 (attached as Exhibit 2).
[10] *Id.* at Shareblue 2020 Plan pg. 35.
[11] *See* American Bridge 21st Century Foundation, Form 990, Return Of Organization Exempt From Income Tax, Schedule I, Grants And Other Assistance To Domestic Organizations (2017) (attached as Exhibit 3).
[12] *Id.* at Schedule L, Part IV.
[13] *Compare* American Bridge 21st Century Foundation, Form 990, Schedule I (2018) (attached as Exhibit 4), *with* American Bridge 21st Century Foundation, Form 990, Schedule L, Part IV (2018).
[14] *See* American Bridge 21st Century Foundation, Form 990, Schedule L, Part V (2017); American Bridge 21st Century Foundation, Form 990, Schedule L, Part V (2018).

True Blue Media to take it over, in light of the site's operating losses.[15] And Shareblue's own materials indicate that it plans to use AB21CF as a source of content for its political commercial activity.

In line with using its tax-exempt funds for non-exempt purposes, AB21CF has provided interest-free "loans" of almost $1,000,000 to "an individual" since 2015. Specifically, in its Audited Financial Statements for the year ending December 31, 2015, AB21CF reported that in November 2015, it "entered into a $500,000 note payable to an individual."[16] The maturity date on the note was February 29, 2016, and "although the note included a requirement to pay interest, this was subsequently waived and no interest was payable on the outstanding amount."[17] At the end of 2015, the outstanding balance remaining on the loan was $500,000.[18] Despite the notes February 2016 maturity date, it was not fully repaid until December 2016.[19]

In October 2017, AB21CF gain "entered into a $400,000 note payable to an individual."[20] The maturity date for this note was April 30, 2018, and again "although the note included a requirement to pay interest, this was subsequently waived for the year ended December 31, 2017 and no interest was payable on the outstanding amounts during this period."[21] At the end of 2017, the outstanding balance on the loan remained $400,000.[22] And again, in disregard of the note's

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[15] Ryan Grim and Gabriel Arana, *Sale Of Blue Nation Review Gives Hillary Clinton Camp Its Very Own Media Outlet*, Huffington Post (Nov. 20, 2015), https://www.huffpost.com/entry/david-brock-blue-nation-review_n_564f0f3de4b0879a5b0a7bc5.

[16] American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2015, at pg. 8 (attached as Exhibit 5).

[17] *Id.*

[18] *Id.*

[19] American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2016, at pg. 9 (attached as Exhibit 6).

[20] American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2017, at pg. 8 (attached as Exhibit 7).

[21] *Id.*

[22] *Id.*

maturity date of April 30, 2018, the note was not ultimately repaid until November 2018.[23] These interest free "loan" transactions with "an individual" appear to represent a misappropriation of nearly $1,000,000 in tax-exempt funds.

Apart from its apparent misuse of tax-exempt funds, AB21CF appears to have made material misstatements in its application for tax-exempt status, upon which the IRS relied in granting it tax-exempt status. Specifically, AB21CF's application listed David Brock as a member of its Board of Directors and, in that role, as a "member" of the Corporation.[24] AB21CF also confirmed to the IRS that it did not "plan to make any distributions of its property or surplus funds to shareholders or members," that no part of the "organization's receipts [would] represent payments for services performed or to be performed," and that it did not "plan to make, any payments to members or shareholders for services performed or to be performed."[25] Despite these assurances, AB21CF did enter into transactions with and distribute payments to its members through its interactions with Brock and True Blue Media, a company owned by Brock.

In addition, AB21CF explained in its application for tax-exempt status, that it "shares some resources, facilities, and employees with American Bridge 21st Century, a section 527 organization registered with, and reporting to, the Federal Election Commission."[26] However, AB21CF told the IRS, "[t]he two entities have entered into a cost-sharing agreement to allocate shared overhead costs so that neither entity is financially supporting the activities of the other."[27] This was especially a concern because, "[t]he two organizations share one overlapping director,

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[23] American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2018, at pg. 10 (attached as Exhibit 8).
[24] American Bridge 21st Century Foundation, Form 1024, Application For Recognition Of Exemption Under Section 501(a), at pg. 3 (attached as Exhibit 9); *see also* American Bridge 21st Century Foundation, Articles of Amendment (Oct. 21, 2011), attached to Form 1024; Bylaws of American Bridge 21st Century Foundation, Art. 2.1, attached to Form 1024.
[25] American Bridge 21st Century Foundation, Form 1024 at pg. 4.
[26] *Id.* at pg. 3.
[27] *Id.*

David Brock, and they have overlapping officers."[28] AB21CF further explained the need for a formal cost-sharing agreement because it "shares space with American Bridge 21st Century."[29]

Nevertheless, at least since 2015, AB21CF has acknowledged in its audited financial statements that it does "not have a formal agreement relating to the allocation of expenses between the two entities."[30] Instead, "allocations were made based on management and budget estimates."[31] Even without a formal agreement, AB21CF has transferred extensive amounts to American Bridge. In 2015, it transferred $2,906,053 "for salary, rent and other expenses."[32] This included rent expenses of $62,576, as well as an overpayment to American Bridge of $293,187.[33] In 2016, AB21CF transferred only $720,000 to American Bridge "for salary, rent and other expenses."[34] However, at the end of 2016, AB21CF claimed to still owe American Bridge $1,005,603.[35] In 2017, AB21CF's transfer to American Bridge ballooned to $4,529,000 "for salary, rent and other expenses."[36] And, at the end of 2017, AB21CF still owed $695,620 to American Bridge.[37] Finally, in 2018, AB21CF transferred $3,305,000 to American Bridge "for salary, rent and other expenses," but still owed American Bridge and additional $1,455,745 as of December 31, 2018.[38] Each of these transfers occurred in the absence of a formal cost-sharing agreement, even though the IRS was assured that such an agreement existed.

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[28] *Id.*
[29] *Id.* at Form 1024 Attachments, Part II, Line 14.
[30] American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2015, at pg. 9.
[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2016, at pg. 9.
[35] *Id.*
[36] American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2017, at pg. 9.
[37] *Id.*
[38] American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2018, at pg. 12.

Finally, AB21CF appears to have abandoned any attempts at credibly describing itself as a social welfare organization under section 501(c)(4). Instead, it has become singularly focused on one mission, "to take on Donald Trump." Its 2020 plan fully describes its planned operations: "The 501(c)(4) [AB21CF] is creating a 47-person war room to take on Donald Trump with a staff of 23 researchers, a communications team of 16 which is feeding our work to the press and doing rapid-response, and a team of six media monitors. [AB21CF] will also build out a robust digital program to deliver our content directly to voters." This is not a proper nonprofit purpose.

VIOLATIONS

A. The Law.

Nonprofit organizations under section 501(c)(4) are subject to limitations on how they direct their resources. They must be "operated exclusively for the promotion of" their exempt purpose.[39] When a nonprofit operates for a private benefit it is not operated exclusively for exempt purposes and is subject to revocation of its tax-exempt status.[40] A private benefit is any non-incidental benefit given to a disinterested person that serves private interests.[41] Accordingly, if a nonprofit organization uses its resources to aid private individuals for private interests it will be providing an impermissible private benefit, unless such aid is "incidental."

In evaluating whether a benefit is incidental, the IRS analysis considers whether the benefit is a necessary consequence of the organization's exempt activities and if any public benefit would result which is greater than the private benefit.[42] The IRS and courts have consistently found that were an organization dedicates its resources to benefit private individuals, rather than the

[39] 26 C.F.R. § 1.501(c)(4)-1(a)(1)(ii).
[40] *American Campaign Academy v. Commissioner*, 92 T.C. 1053, 1065 (1989).
[41] *Id.*
[42] IRS GCM 39,598 (December 8, 1986).

community as a whole, it is not operated exclusively for exempt purposes, its tax-exempt status should be revoked.[43]

Additionally, "[t]he promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."[44] Therefore, if a social welfare organization under 501(c)(4) engages in this kind of activity more than incidentally it will not qualify for tax-exempt status.[45] Political campaign intervention activities "include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate."[46]

Nonprofit section 501(c)(4) organizations are also prohibited from providing private inurement to any person with a personal and private interest in the activities of the organization.[47] Violating this absolute prohibition can cause a nonprofit to lose its tax-exempt status. Examples of private inurement include, where a nonprofit uses its funds to pay the personal expenses of its founder and CEO, and where a nonprofit purchases items from members of its governing board for more than their fair market value.[48]

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[43] Rev. Rul. 73-306, 1972-2 C.B. 179 (a nonprofit organization formed to represent member-tenants of an apartment complex does not qualify for exemption under section 501(c)(4) because the organization is not primarily engaged in activities for the common good and general welfare of the community); *Retired Teachers Legal Defense Fund v. Commissioner*, 78 T.C. 280 (1982) (organization dedicated to protecting the financial stability of the New York City Teachers' Retirement System was not a charitable organization because it served the private interests of its members rather than the public more broadly).

[44] 26 C.F.R. § 1.501(c)(4)-1(a)(ii).

[45] *Compare* Rev. Rul. 81-95, 1981-1 C.B. 332 (holding that "[s]ince the organization's primary activities promote social welfare, its lawful participation or intervention in political campaigns on behalf of or in opposition to candidates for public office will not adversely affect its exempt status"); *with* Rev. Rul. 67-368, 1967-2 C.B. 194 ("An organization whose primary activity is rating candidates for public office is not exempt from Federal income tax under section 501(c)(4)").

[46] 26 C.F.R. § 1.501(c)(3)-1(c)(3)(iii).

[47] *See* 26 U.S.C. §§ 501(c)(3) and (4); 26 C.F.R. § 1.501(a)-1(c) (defining private shareholder or individual as any "persons having a personal and private interest in the activities of the organization.").

[48] 26 C.F.R. § 1.501(c)(3)-1(f)(2)(iv), Examples 1 and 3.

Additionally, nonprofit section 501(c)(4) organizations can face excise taxes for engaging in excess benefit transactions with a disqualified person.[49] A disqualified person is: (1) anyone who, during the 5-years preceding the transaction, was in a position to exercise substantial influence over the organization (e.g., officer or director); (2) for anyone described in (1), their spouse, ancestor, child (including adopted), grandchild, great grandchild, sibling (whole or half), or spouse of their child, grandchild, great grandchildren, or sibling; or (3) a corporation, partnership, or trust in which a person described in (1) or (2) owns more than 35% of the total combined voting power, profit interest, or beneficial interest.[50] An excess benefit transaction occurs when a nonprofit provides an economic benefit, directly or indirectly, to or for the use of a disqualified person if the value of the benefit exceeds the value of consideration received for the benefit (including the performance of services).[51]

Finally, because nonprofit section 501(c)(4) organizations are operated for charitable, social welfare purposes, they face limits on engaging in commercial activity that is not related to their exempt purpose, but is instead similar to for-profit commercial activity. To determine whether commercial activity is substantially related to an organization's exempt purposes the IRS will see if it contributes importantly to such purposes.[52] The scope of the activity will also be examined to determine if it goes beyond what is needed for the exempt purposes.[53] And taxable commercial activity can include exploiting the good will or other intangibles of a nonprofit for a commercial endeavor that does not contribute importantly to the accomplishment of an exempt purpose.[54]

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[49] 26 U.S.C. § 4958.
[50] *Id.* at (f)(1).
[51] *Id.* at (c)(1)(A).
[52] *Id.* at (d).
[53] *Id.*
[54] 26 C.F.R. § 1.513-1(d)(4)(iv).

B. AB21CF Is Not "Operated Exclusively For The Promotion Of" Its Exempt-Purpose.

AB21CF claims its exempt purpose is "to expose and oppose the conservative movement's dishonest policies and tactics both at the national and state level."[55] Consistent with its role as a nonprofit organization, AB21CF has a duty to serve the public interest, rather than any particular private interest. Despite this obligation, AB21CF has engaged in activities that are designed solely to benefit private interests and advance partisan political objectives.

1. AB21CF's Transfer Of Nonprofit Funds To A For-Profit Business Provided A Private Benefit To That Organization And David Brock.

AB21CF's transfer of $2,715,201 to True Blue Media in 2017 and 2018 conferred a private benefit onto that organization and its founder, David Brock.[56] The use of nonprofit resources to aid a for-profit organization for private interests—e.g., the purchase of a liberal media organization—is not incidental to AB21CF's tax-exempt purpose.

In evaluating AB21CF's improper private benefit, the IRS must balance any public benefit that could result with the private benefits conferred. Here, that balancing analysis is simple. AB21CF's transfer of $2,715,201 to True Blue Media created ***no*** public benefit, but served an immense private benefit to the for-profit company and David Brock. Because AB21CF has dedicated its nonprofit resources to benefit private individuals rather than the community as a whole, it is not operated exclusively for exempt purposes, and its tax-exempt status should be revoked.

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[55] American Bridge 21st Century Foundation, Form 1024 Attachments, Part II, Line 1.

[56] *See* American Bridge 21st Century Foundation, Form 990, Schedule L, Part IV (2017); American Bridge 21st Century Foundation, Form 990, Schedule L, Part IV (2018).

2. AB21CF's Transfer Of Nonprofit Funds To "An Individual" As An Interest Free "Loan" Provided A Private Benefit To That Individual.

From 2015 through 2018, AB21CF provided nearly $1,000,000 as an interest free "loan" to someone only described as "an individual."[57] These transfers unquestionably provided a private benefit to this individual who received an interest free, repayable when you want, "loan" from AB21CF. Moreover, it cannot reasonably be argued that such transfers are incidental to AB21CF's tax-exempt purpose. In fact, there was no public benefit from these transfers; only a private benefit to the individual who received the transfers interest free. In light of AB21CF's pervasive use of tax-exempt funds for non-exempt purposes, and the creation of a private benefit as a result, its tax-exempt status should be revoked, at least from 2015.

3. AB21CF Is Primarily Operated For Political Purposes And Not Social Welfare Activities.

AB21CF is operated for direct and indirect participation in political campaign activity. This was made clear in its most recent strategic plan outlining the organizations activities through 2020. As the plan noted, the 501(c)(4) organization has developed a "war room" for the purpose of taking on Donald Trump. These activities include "rapid-response," and other activities primarily associated with political campaigning. All of this activity is engaged in, with one goal in mind: "to deliver our content directly to voters." This kind of direct and indirect political campaign intervention is not consistent with the IRS' view of social welfare activities. And because the 2020 plan makes clear that it is AB21CF's sole focus, there is no argument that it is only incidental.

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[57] American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2015, at pg. 8; American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2016, at pg. 9; American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2017, at pg. 8; American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2018, at pg. 10.

4. AB21CF Provided A Private Benefit And Inurement To Its Connected Super PAC, American Bridge.

AB21CF has, and by all accounts continues to, provided a private benefit and private inurement to American Bridge, its connected super PAC. AB21CF has systematically transferred substantial amounts to American Bridge in the absence of any formal cost-sharing agreement. These amounts, which are simply described as being for "salary, rent and other expenses," have ranged in amount from $720,000 to 4,529,000. Without a formal cost-sharing agreement, the possibility for abuse rises substantially between two related organizations, and it becomes impossible to know whether these payments represent the fair market value of whatever services American Bridge provides for AB21CF. Moreover, because Brock is linked to both organizations, the potential for self-dealing grows. These transactions should be thoroughly investigated, and a detailed accounting of each transfer must be provided to disclose the extent of any private benefit or inurement occurring between these two interconnected organizations.

C. AB21CF Provided Private Inurement To Its Founder David Brock, Who Used Income And Assets Of The Organization For His Personal Gain.

As a nonprofit organization, AB21CF is prohibited from providing private inurement to any person with a personal and private interest in the activities of the organization, i.e., an "insider." As founder of AB21CF David Brock is statutorily defined as an "insider" of the organization. IRS regulations make clear that where a nonprofit organization uses its funds to pay the personal or private expenses of its founder and CEO, it is providing them impermissible private inurement.

In addition to founding AB21CF, David Brock also founded True Blue Media and made no attempt to hide his interest in using the company to advance private goals and objectives—the election of Democratic candidates and the promotion of their ideas. Accordingly, the use of

AB21CF nonprofit funds to pay the expenses of David Brock's private business venture constitutes, on its face, private inurement. Because nonprofit organizations are absolutely prohibited from providing any private inurement, the IRS should revoke AB21CF's tax-exempt status.

D. AB21CF Engaged In An Excess Benefit Transaction With David Brock And/Or True Blue Media.

AB21CF faces an excise tax for engaging in any excess benefit transactions with disqualified persons. As the founder of AB21CF, David Brock meets the IRS' definition of a "disqualified person," and because he owns more than a 35% interest in True Blue Media, it is a disqualified person as well. Accordingly, AB21CF cannot enter into an excess benefit transaction with either David Brock or True Blue Media without being subject to excise taxes. To determine whether AB21CF engaged in an excess benefit transaction, the economic benefit conferred by it must be measured against the value of any consideration received for the benefit. This again is a simple calculation. AB21CF conferred an economic benefit to True Blue Media and David Brock valued at $1.6 million. In exchange, AB21CF received ***no*** consideration.

AB21CF tried to disguise its payment to True Blue Media as a "grant." This was likely done, in part, to detract from the reality that AB21CF received nothing in return for its transfer of $1.6 million to a for-profit corporation. Of course, the transfer was not a "grant," but in fact a transfer "pursuant to a simple agreement for future equity." By its plain terms this transfer included no consideration to be paid by True Blue Media to AB21CF. This is a clear excess benefit transaction. Accordingly, the IRS should determine that an excess benefit transaction has occurred and impose applicable excise taxes.

E. AB21CF Is Engaged In Commercial, For-Profit Business Activities Through Its Investment In True Blue Media.

True Blue Media exists solely to manage David Brock's ownership interest in Shareblue, which unquestionably engages in commercial activity for profit. In fact, recent media reports suggest that David Brock is looking for new ways to generate revenue through Shareblue.[58] This, according to Brock, will include repurposing his vast network of nonprofit organizations—including AB21CF—to leverage them for commercial purposes.[59] Taxable commercial activity also includes exploiting the good will or other intangibles of a nonprofit for a commercial endeavor.[60] Therefore, under these facts, AB21CF's transfer of $1.6 million to True Blue Media likely constitutes commercial, for-profit business activity. Accordingly, the IRS should determine the extent of this commercial activity and impose tax on AB21CF for any revenue or income related to such for-profit activities.

F. AB21CF Made Material Misstatements On Its Application For Recognition Of Tax-Exempt Status With The IRS.

When filing its application for tax-exempt status, AB21CF told the IRS it would not make distributions of its property or surplus funds to members, and would not make payments to its members for services performed.[61] David Brock was, according to the same application for tax-exempt status, a member of AB21CF.[62] Therefore, when transferring $1.6 million to an entity he wholly owned—True Blue Media—in return for no consideration, AB21CF engaged in the exact activity it assured the IRS it would not. Further, in its tax-exempt application, AB21CF told the IRS it would not receive payments for services performed or to be performed.[63] However, recent

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[58] Lachlan Markay, *David Brock Thinks Liberals Will Pay For His 'Twitter-Like' Website*, FREE BEACON (Jan. 25, 2017), https://freebeacon.com/politics/david-brock-thinks-liberals-will-pay-twitter-like-website.
[59] *See* Democracy Matters Strategic Plan for Action, Introduction at pg. 3.
[60] 26 C.F.R. § 1.513-1(d)(4)(iv).
[61] American Bridge 21st Century Foundation, Form 1024 at pg. 4.
[62] *Id.* at pg. 3.
[63] *Id.* at pg. 4.

media reports and documents produced by Shareblue, indicate that it uses AB21CF to produce content for its for-profit activities.[64] This is in direct contradiction to what AB21CF told the IRS about its activities.

Moreover, AB21CF made guarantees to the IRS in its application for tax-exempt status, that any transfers of funds to its connected super PAC, American Bridge, would be governed by formal cost-sharing agreements.[65] Despite this assurance, with the stated goal of ensuring "that neither entity is financially supporting the activities of the other," AB21CF has transferred millions to American Bridge without any formal cost-sharing agreement.[66] In light of these material misstatements the IRS should retroactively revoke AB21CF's tax-exempt status under section 501(c)(4).[67]

CONCLUSION

AB21CF has engaged in activity that violates the IRC and constitutes an abuse of its tax-exempt status under section 501(c)(4). Accordingly, the IRS should undertake an examination of AB21CF to determine the extent to which it has misused its tax-exempt status. Further, the IRS should determine that AB21CF has engaged in egregious and systemic violations of its tax-exempt status, and take appropriate action as warranted including, but not limited to: revoking its tax-exempt status; imposing applicable excess benefit transaction excise taxes under section 4958; imposing any unrelated business income tax; treating the organization in its entirety as a taxable

[64] *See, e.g.*, Democracy Matters Strategic Plan for Action, Introduction at pg. 3.

[65] American Bridge 21st Century Foundation, Form 1024 at pg. 3.

[66] *Id.*; *see also* American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2015, at pg. 9; American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2016, at pg. 9; American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2017, at pg. 9; American Bridge 21st Century Foundation, Financial Statements For The Year Ended December 31, 2018, at pg. 12.

[67] *Democratic Leadership Council, Inc. v. United States*, 542 F. Supp. 2d 63, 70-71 (D.D.C. 2008); 26 C.F.R. § 601.201(n)(6) (a determination letter may be retroactively revoked "if the organization omitted or misstated a material fact, [or] operated in a manner materially different from that originally represented").

entity; imposing any appropriate penalties and additions to tax; and referring violations to the Department of Justice for possible criminal prosecution.