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Amended 2012 Form 990 which disclosed a contribution of \$1.71 million to Now or Never PAC, and included language added by ACU's auditors which stated that "the \$1.71 million was a political contribution received by the Organization and promptly and directly delivered to a separate political organization." The auditors did not consult with contemporaneous ACU staff regarding the nature of this transaction, and instead relied upon the face of ACU's financials to support their notation on the amended IRS filing.

The facts are that the ACU received donations totaling \$10,277,123 in 2012, including an amount similar to \$1.7 million, and those \$10,277,123.00 of donations were deposited into ACU's general treasury account. ACU engaged in a wide range of public education and political activities in 2012, including making electioneering communications. Those political activities included a contribution of \$1.7 million to Now or Never PAC on October 31, 2012. At the time of both the contribution to ACU, and ACU's other election-related 2012 activity, ACU staff consulted with experienced legal counsel to confirm that such transactions were permissible under the Act.<sup>1</sup>

## II. Legal Analysis

Section 501(c)(4) nonprofit organizations are permitted to engage in partisan political activity so long as such activity does not become the organization's primary purpose.<sup>2</sup> In addition, IRS regulations permit 501(c)(4) organizations to accept political contributions that are "promptly and directly" transferred to a separate segregated fund.<sup>3</sup> Thus, ACU was permitted to accept funds from a person and subsequently contribute those funds or a mixture of funds, to a separate segregated fund or political committee. Likewise, it was permissible for Now or Never PAC to accept the contribution and disclose that it was received from ACU. The question here, however, is whether Now or Never PAC was also required to investigate, determine, and then disclose the name of the person or corporation who made the donation or donations to ACU whose funds were then donated to Now or Never PAC.

### A. Section 441f is an Anti-Circumvention Rule that is Inapplicable to Super PACS

The Act provides that "no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person."<sup>4</sup> This statute was designed to prevent the circumvention of contribution limits, and is clearly applicable to and has been enforced regarding contributions to candidates, separate segregated funds, and

<sup>1</sup> ACU staff consulted with an election law attorney at Wiley Rein LLP, a well-known and highly regarded firm that includes a former FEC Commissioner and represents many prominent organizations.

<sup>2</sup> Rev. Rul. 81-95, 1981-1 C.B. 332.

<sup>3</sup> 26 C.F.R. § 1.527-6(c).

<sup>4</sup> 2 U.S.C. § 441f (current version at 52 U.S.C.S. § 30122).



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### B. The Commission Has Not Applied Section 441f to Super PACs

It is no coincidence that the Commission has not applied Section 441f to Super PAC's because it is constitutionally suspect in light of recent court decisions.<sup>11</sup> There is simply no cognizable anti-corruption interest in enforcing this provision to Super PAC contributions. The only interest the Supreme Court has recognized to justify contribution limits is quid pro quo corruption, and that interest is lost when applied to Super PACs.

In this matter, ACU raised over \$10.2 million in 2012, including the aforementioned contribution to ACU in an amount similar to \$1.7 million. The entire \$10.2 million was deposited into ACU's general treasury account, which was used to pay for a number of political activities during the 2012 election, including the contribution of \$1.7 million to Now or Never PAC. ACU relied in good faith on the advice of experienced legal counsel who confirmed the legality of the transaction at the time it occurred.

### III. Conclusion

All funds used to make the contribution to Now or Never PAC came from ACU's general treasury account, the same account that was used to pay for a variety of activities during 2012. Moreover, the contribution was publicly disclosed by Now or Never PAC. The application of Section 441f to contributions made to Super PACs is far from settled, and the Commission should not use an enforcement action to resolve this question. Thus, we respectfully request that the Commission dismiss the Complaint.

Thank you for your consideration of this matter, and please do not hesitate to contact me directly at (202) 572-8663 with any questions.

Respectfully submitted,



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<sup>11</sup> For example, LLCs are permitted to make unlimited contributions to Super PACs; however, it has never been interpreted that such contributions violate Section 441f if the Super PAC does not report the names of the individual members of the LLC. See "How the Founder of the Pugees Became a Big-Time Donor Without Anyone Knowing," slate.com at [http://www.slate.com/articles/news\\_and\\_politics/politics/2015/03/prns\\_michel\\_funded\\_super\\_pac\\_black\\_men\\_vote\\_limited\\_liability\\_companies.html](http://www.slate.com/articles/news_and_politics/politics/2015/03/prns_michel_funded_super_pac_black_men_vote_limited_liability_companies.html).