



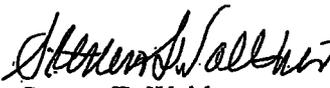
pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) (formerly 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A)) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Antoinette Fuoto, the attorney assigned to this matter, at (202) 694-1634.

On behalf of the Commission,

  
Steven T. Walther  
Chairman

Enclosures  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: American Conservative Union MUR: 6920

5 **I. INTRODUCTION**

6 This matter was generated by a Complaint alleging that American Conservative Union  
7 (“ACU”) knowingly permitted its name to be used to effect a \$1.71 million contribution to Now  
8 or Never PAC from an undisclosed donor, and knowingly helped the undisclosed donor make the  
9 contribution, in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b).

10 **II. FACTS**

11 Now or Never PAC, an independent expenditure only committee, reported that on  
12 October 31, 2012, it received a \$1.71 million contribution from ACU,<sup>1</sup> a 501(c)(4) social welfare  
13 organization.<sup>2</sup> In May 2014, apparently after an independent auditor reviewed its 2012 finances,<sup>3</sup>  
14 ACU filed an Amended 2012 IRS Form 990 that disclosed the \$1.71 contribution to Now or  
15 Never PAC as “a political contribution received by the Organization and promptly and directly  
16 delivered to a separate political organization.”<sup>4</sup>

17 **III. LEGAL ANALYSIS**

18 The Act prohibits a person from knowingly permitting his or her name to be used to  
19 effect a contribution in the name of another.<sup>5</sup> The requirement that a contribution be made in the

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<sup>1</sup> Now or Never PAC, 2012 Post-General Report (Dec. 6, 2012) at 6; *see also* Compl. ¶ 14 (Feb. 27, 2015).  
<sup>2</sup> ACU Resp. at 1 (Apr. 23, 2015).  
<sup>3</sup> Compl. ¶¶ 15-17, Exs. B (Conlon & Associates Independent Auditor’s Report, Apr. 9, 2014) and C (ACU Amended Form 990, May 12, 2014).  
<sup>4</sup> Compl Ex. C at Schedule O, Schedule C.  
<sup>5</sup> 52 U.S.C. § 30122; *see also* 11 C.F.R. § 110.4(b). The term “person” includes partnerships, corporations, and other organizations. 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10.

1 name of its true source promotes Congress's objective of ensuring the complete and accurate  
2 disclosure by candidates and committees of the political contributions they receive.<sup>6</sup> Courts have  
3 uniformly rejected the assertion that "only the person who actually transmits funds . . . makes the  
4 contribution,"<sup>7</sup> recognizing that "it is implausible that Congress, in seeking to promote  
5 transparency, would have understood the relevant contributor to be [an] intermediary who  
6 merely transmitted the campaign gift."<sup>8</sup> Accordingly, the Act and the Commission's regulations  
7 provide that a person who provides funds to another for the purposes of contributing to a  
8 candidate or committee "makes" the resulting contribution.<sup>9</sup> If an intermediary merely plays a  
9 "ministerial role" in transmitting a contribution, the contribution should not be attributed to the  
10 intermediary but instead to the original source.<sup>10</sup>

11 Based on ACU's representation that the contribution to Now or Never PAC was "a  
12 political contribution received by the Organization and promptly and directly delivered to a  
13 separate political organization," the Commission finds reason to believe that ACU violated 52  
14 U.S.C. § 30122.

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<sup>6</sup> See, e.g., *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [section 30122] — to ensure the complete and accurate disclosure of the contributors who finance federal elections — is plain.").

<sup>7</sup> *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

<sup>8</sup> *O'Donnell*, 608 F.3d at 554.

<sup>9</sup> See, e.g., *Boender*, 649 F.3d at 660 ("[W]e consider the giver to be the source of the gift, not any intermediary who simply conveys the gift from the donor to the donee.").

<sup>10</sup> *O'Donnell*, 608 F.3d at 550.

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