BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 6920
American Conservative Union, *et al.*	)	
	)	

SECOND GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED

We recommend that the Commission: (1) substitute the name Government Integrity LLC ("GI LLC") in the place of "Unknown Respondent" in the Commission's previous findings that Unknown Respondent violated 52 U.S.C. § 30122 by making a contribution in the name of another; (2) find reason to believe that GI LLC knowingly and willfully violated 52 U.S.C. § 30122 by making a contribution in the name of another; (3) find reason to believe that James C. Thomas, III ("Thomas") knowingly and willfully violated 52 U.S.C. § 30122 by knowingly helping or assisting in the making a contribution in the name of another; (4) find reason to believe that Now or Never PAC and Thomas, in both his official capacity as treasurer and in his individual capacity, knowingly and willfully violated 52 U.S.C. § 30122 by knowingly accepting a contribution in the name of another, and knowingly and willfully violated 52 U.S.C. § 30104(b)(3)(A) by misreporting that contribution; (5) approve the attached Factual and Legal Analyses; (6) approve the attached Subpoenas to Produce Documents and Orders to Submit Written Answers to James C. Thomas, III, American Conservative Union, and Gregg Keller.

II. BACKGROUND

The Commission previously found reason to believe that Unknown Respondent violated 52 U.S.C. § 30122 when it made a $1.71 million contribution in the name of American Conservative Union ("ACU") to Now or Never PAC, an independent expenditure-only committee, and that ACU

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1 violated 52 U.S.C. § 30122 when it allowed its name to be used to effect that contribution.[1] The
2 Commission took no action at that time on the allegation that Now or Never PAC may have
3 knowingly accepted a contribution made in the name of another, in violation of 52 U.S.C. § 30122,
4 and the Office of General Counsel ("OGC") commenced an investigation.

5 **III. SUMMARY OF INVESTIGATION**

6 In its investigation, which is still ongoing, OGC learned the identity of Unknown
7 Respondent and additional information regarding the circumstances of the transaction.
8 According to ACU, Thomas, who is also the treasurer of Now or Never PAC, "wired $1,800,000
9 to ACU from an account with the name Government Integrity LLC."[2] ACU's Response further
10 states that Thomas "and other individuals who may have been political consultants" also gave an
11 employee of ACU instructions for wiring the $1,710,000 contribution to Now or Never PAC.[3]
12 On the same day that ACU received the contribution from GI LLC with the assistance of
13 Thomas, ACU transferred the $1.71 million contribution to Now or Never PAC pursuant to
14 Thomas's wiring instructions.[4] ACU later characterized the contribution to Now or Never PAC
15 as a "political contribution received by the Organization and promptly and directly delivered to a
16 separate political organization" in an IRS filing.[5]

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1 *See* Certification, MUR 6920 (American Conservative Union, *et al.*) (Jan. 27, 2017); First Gen. Counsel's Rpt., MUR 6920.

2 ACU RTB Resp. (Apr. 9, 2017) at 2.

3 *Id.*

4 *Id.* at 1-2. ACU states that at the time of the contribution, ACU bank accounts had a combined total balance of approximately $538,000. *Id.* ACU therefore would not have been able to make a $1.71 million contribution to Now or Never PAC without the GI LLC funds.

5 *See* ACU Resp. at 2 (Apr. 23, 2015).

Based on this information, OGC designated GI LLC and Thomas (both in his individual capacity and as agent of GI LLC) as respondents and notified them of the Complaint.[6] Counsel for Thomas provided a response on Thomas's behalf, and noted in a telephone conversation that they do not represent GI LLC, but stated that he believed GI LLC had a sole member who is now deceased.[7] Thomas's response argues that the Complaint fails to show that GI LLC provided the funds to ACU for the purpose of making a contribution to Now or Never PAC, and likewise fails to show that Thomas had knowledge of the conduit arrangement.[8] It further disputes the Complaint's allegation that Now or Never PAC failed to accurately disclose the contribution from GI LLC, and claims that even if that were true, personal liability would not be conferred to Thomas as treasurer of Now or Never PAC. It does not contest Thomas's role in directing the wire transfer from GI LLC's account to ACU, or his role in providing wiring instructions to ACU for the contribution to Now or Never PAC.

IV. LEGAL ANALYSIS

A. There is Reason to Believe Government Integrity LLC Made and James C. Thomas, III Knowingly Helped or Assisted in Making a Contribution in the Name of Another

As set forth in the Commission's Factual and Legal Analysis, there is reason to believe that Unknown Respondent violated 52 U.S.C. § 30122 by making a $1.71 million contribution to Now or Never PAC in the name of ACU. Because Government Integrity LLC[9] made the

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[6] Thomas was notified in his capacity as treasurer of Now or Never PAC in March of 2015.

[7] We requested information regarding the current status of GI LLC and Thomas's precise relationship with that entity, but the Response declined to provide such information or any factual background regarding the transaction. Thus, there is no further information in the record regarding the ownership and control of GI LLC other than the fact that Thomas acted on its behalf in making the $1.8 million transfer to ACU. Notably, the Response does not dispute Thomas's role as agent of GI LLC at the time of the transaction.

[8] Thomas Resp. (May 23, 2017).

[9] We do not know whether GI LLC elected to be treated as a corporation by the Internal Revenue Service pursuant to 26 C.F.R. § 301.7701-3. If information becomes available that would indicate that the contribution was

contribution, we recommend that the Commission substitute its name in the place of "Unknown Respondent" in the Commission's previous finding and find reason to believe that GI LLC violated 52 U.S.C. § 30122 by making the contribution in the name of another. We also recommend that the Commission find reason to believe that Thomas violated 52 U.S.C. § 30122 by knowingly helping or assisting any person in making a contribution in the name of another.[10] Thomas sent the contribution to ACU from GI LLC while also providing wiring instructions for the contribution to be delivered to Now or Never PAC. Though Thomas argues that the Complaint has not demonstrated GI LLC's or Thomas's intent to make a contribution in the name of another, as noted, the factual record shows that ACU characterized the contribution to Now or Never PAC as a "political contribution received by the Organization and promptly and directly delivered to a separate political organization."[11] Accordingly, the current record provides reason to believe that Thomas violated 52 U.S.C. § 30122 by knowingly helping or assisting any person in making a contribution in the name of another.[12]

B. There is Reason to Believe Now or Never PAC Knowingly Accepted and Misreported a Contribution in the Name of Another

The Act prohibits a committee from knowingly accepting a contribution made in the name of another.[13] The Act also requires political committees such as Now or Never PAC to file

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properly attributable to its sole member under 11 C.F.R. § 110.1(g)(4), we would make the appropriate recommendation to the Commission at that time.

[10] *See* 11 C.F.R. § 110.4(b)(iii). Because we do not yet know the precise nature of the relationship between GI LLC and Thomas, particularly whether Thomas provided any of the funds used to make the contribution, Thomas may have violated the Act's prohibition on knowingly helping or assisting a person in making a contribution in the name of another. *See id.*

[11] ACU Resp. at 2 (Apr. 23, 2015).

[12] *See* 11 C.F.R. § 110.4(b)(iii).

[13] 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(iv).

1 regular disclosure reports.[14] Committees must disclose itemized breakdowns of receipts,
2 including the name and address of each person who has made any contribution in an aggregate
3 amount or value in excess of $200 within the calendar year, together with the date and amount of
4 any such contribution.[15] In addition, if a committee treasurer discovers after receipt of an
5 apparently legitimate contribution that it was made in the name of another, the treasurer must
6 refund or disgorge the contribution within 30 days.[16] The requirement that a contribution be
7 made in the name of its true source promotes Congress's objective of ensuring the complete and
8 accurate disclosure by candidates and committees of the political contributions they receive.[17]

9 Thomas, the treasurer of Now or Never PAC, appears to have both wired the $1.8 million
10 from GI LLC to ACU and provided instructions on wiring the $1.71 million contribution from
11 ACU to Now or Never PAC on the same day. His role as treasurer of Now or Never PAC leaves
12 little doubt that Now or Never PAC knew that ACU was not the true source of the $1.71 million
13 contribution. Accordingly, we recommend that the Commission find reason to believe that Now
14 or Never PAC and James C. Thomas, III, in his official capacity as treasurer, violated 52 U.S.C.
15 § 30122 by knowingly accepting a contribution in the name of another, and violated 52 U.S.C.
16 § 30104(b)(3)(A) by failing to accurately report the contribution.

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[14] 52 U.S.C. § 30104(b).

[15] *Id.* § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(3)-(4).

[16] 11 C.F.R. § 103.3(b)(2); *see* MUR 5643 (Carter's Inc.) (informing recipient committee of its obligation to refund or disgorge illegal contribution); Advisory Op. 1996-05 (Jay Kim for Congress) (allowing for disgorgement of illegal contributions to U.S. Treasury as an alternative to refunding contributions).

[17] *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.").

C. There is Reason to Believe Thomas, GI LLC, and Now or Never PAC Acted Knowingly and Willfully and That Thomas Violated the Act in His Personal Capacity

We further recommend that the Commission find that the potential violations by Thomas, GI LLC, and Now or Never PAC were knowing and willful. A violation of the Act is knowing and willful if the "acts were committed with full knowledge of all the relevant facts and a recognition that the action in prohibited by law."[18] This does not require proving knowledge of the specific statute or regulations that the respondent allegedly violated.[19] Instead, it is sufficient that the respondent "acted voluntarily and was aware that his conduct was unlawful."[20]

Here, Thomas played a central role in the conduit scheme. He not only assisted GI LLC in making a contribution in the name of another, but did so for the benefit of the PAC for which he is treasurer. His dual role in both the making of and receipt of the contribution demonstrates his knowledge of the conduit scheme. Thomas has served as the treasurer of Now or Never PAC since 2012, when the group filed its Statement of Organization.[21] He is also the treasurer of at least one other federal committee[22] and two Missouri political committees.[23] As such, we presume he has significant knowledge of campaign finance law. The Commission has previously afforded weight to a respondent's knowledge of campaign finance law in finding that

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[18] 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

[19] *United States v. Danielczyk*, 917 F.Supp.2d 573, 579 (E .D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

[20] *Id.*

[21] *See* Statement of Organization, Now or Never PAC (Feb. 22, 2012).

[22] *See* Statement of Organization, Courageous Conservatives PAC (Sept. 16, 2015).

[23] *See, e.g.*, Eli Yokley, *Missouri Candidate Picks Up Where She Left Off After Rival's Suicide*, NEW YORK TIMES (March 29, 2015) (identifying Thomas as the treasurer of two different Missouri committees).

a respondent knowingly and willfully violated 52 U.S.C. § 30122.[24] Based on the foregoing, we recommend that the Commission find that Thomas knowingly and willfully violated 52 U.S.C. § 30122 by knowingly helping or assisting in the making of a contribution in the name of another and accepting a contribution made in the name of another, and that he knowingly and willfully violated 52 U.S.C. § 30104(b)(3)(A) by failing to accurately report that contribution as treasurer of the recipient committee. Because Thomas's conduct is attributable to both GI LLC[25] and Now or Never PAC, we further recommend that the Commission find that GI LLC likewise knowingly and willfully violated 52 U.S.C. § 30122, and that Now or Never PAC and Thomas, in his official capacity as treasurer, knowingly and willfully violated 52 U.S.C. §§ 30122 and 30104(b)(3)(A).

Finally, we recommend that the Commission find Thomas personally liable for his role in accepting a contribution in the name of another on behalf of Now or Never PAC. The Commission has stated that, "[d]ue to their 'pivotal role,' treasurers may be held personally liable for failing to fulfill their responsibilities under the Act and the Commission's regulations."[26] Thus, the Commission has determined as a matter of policy that it will proceed against treasurers in their personal capacity:

> [W]here information indicates that the treasurer knowingly and willfully violated an obligation that the Act or regulations specifically impose on treasurers or where the treasurer recklessly failed to fulfill the duties imposed by law, or where the treasurer has intentionally deprived himself or herself of the operative facts

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[24] *See* Factual & Legal Analysis at 9, MUR 7027 (MV Transportation, Inc.) (concluding that a respondent's conduct was knowing and willful where respondent had donated over $100,000 to federal candidates and was familiar with campaign finance regulations) (open matter).

[25] *See* note 7 *supra*.

[26] Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. at 5 (Jan. 3, 2005).

giving rise to the violation.[27]

Because Thomas's conduct on behalf of Now or Never PAC was knowing and willful, we recommend that the Commission find reason to believe that Thomas knowingly and willfully violated 52 U.S.C. §§ 30122 and 30104(b)(3)(A) in his personal capacity.

V. DISCOVERY

We have on multiple occasions requested additional information, including communications and other documents discussing the transaction, from ACU, ACU's former executive director, Gregg Keller, and Thomas. We have requested information about the nature of the relationship between GI LLC and Thomas, the source of the funds Thomas wired, the purpose for wiring those funds through ACU, and Respondents' knowledge of relevant campaign finance law. The current record is unclear as to whether Thomas provided the funds to the GI LLC account, or whether other parties were involved. Additionally, we are seeking any documentation regarding Thomas's purpose in orchestrating the transaction that may demonstrate whether his actions were knowing and willful.

The parties have either delayed or declined our requests for additional factual information and documents pertaining to the transaction. Given the impending expiration of the statute of limitations – the contribution was delivered to Now or Never PAC on October 31, 2012, and thus the violation expires on October 31, 2017 – and the parties' reluctance to voluntarily cooperate with our investigation, we propose the attached subpoenas and orders to compel answers to written questions and to produce documents to: (1) Thomas, (2) ACU, and (3) Keller. As explained below, we believe that the subpoenas and orders are necessary to obtain the

[27] *Id.* at 3-4.

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information needed to complete our investigation and make further recommendations to the Commission.

A. James C. Thomas, III

Thomas has consistently declined to provide factual information regarding the contribution at issue in this matter. In early May, we spoke with Thomas's counsel and asked that Thomas provide information and documents to complete the factual record, including more information regarding GI LLC and its unknown principal. We received Thomas's response to the Commission's findings on May 23, 2017, but it did not contain any of the requested factual information. We again asked counsel to provide additional information. In a phone call on May 30, 2017, counsel showed hesitancy to provide additional factual information, stating that he did not want to provide a "roadmap" to the Commission of his client's conduct. Counsel then but stated that his client likely would not agree to toll the statute of limitations,

During that discussion, counsel stated that he would provide an attorney proffer that may mitigate Thomas's conduct, but late in the evening on June 6, 2017, when that proffer was due, counsel informed us via email that Thomas would not provide any declaration or proffer at this time. Accordingly, we propose the attached order to compel James C. Thomas, III to answer questions and provide documents regarding the contribution at issue.

B. American Conservative Union

Following ACU's submission of its written narrative, we asked counsel for ACU whether they possessed any documents reflecting communications between ACU and Thomas about the transaction. This information is needed to confirm the nature of the arrangement between GI LLC/Thomas and ACU. ACU did not respond, and we inquired about any such documents on

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several occasions between April 14, 2017 and June 13, 2017. On May 25, 2017, counsel for ACU indicated in an email that their client possessed several documents that are responsive to our inquiry, but that counsel had not yet completed a privilege review. Counsel further stated that he would get back to us regarding the results of the privilege review during the week of May 30, 2017. On June 6, 2017 we spoke with counsel, who informed us that he believed most of their documents were privileged. On June 13, 2017, counsel confirmed that he had privilege concerns about all of the responsive documents in ACU's possession and has not produced any documents.

Accordingly, we propose the attached order to compel ACU to provide documents regarding the transaction at issue so that ACU will either produce the documents or make a formal assertion of privilege.

C. Gregg Keller

Counsel for ACU suggested that we contact Gregg Keller, the former executive director of ACU, for additional information that current ACU employees may not have regarding the nature of the arrangement between GI LLC/Thomas and ACU. On May 11, 2017, we spoke with Keller's counsel to set up a time for an informal interview with Keller, but counsel has been unwilling to set a date. On June 15, 2017, counsel informed us that his client would not consent to an informal interview. We therefore propose the attached order to compel Keller to provide documents and answer questions regarding the transaction.

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VI. RECOMMENDATIONS

1. Substitute the name Government Integrity LLC in the place of "Unknown Respondent" in the Commission's previous findings that Unknown Respondent violated 52 U.S.C. § 30122 by making a contribution in the name of another;

2. Find reason to believe that Government Integrity LLC knowingly and willfully violated 52 U.S.C. § 30122 by making a contribution in the name of another;

3. Find reason to believe that James C. Thomas, III knowingly and willfully violated 52 U.S.C. § 30122 by knowingly helping or assisting in the making of a contribution in the name of another;

4. Find reason to believe that Now or Never PAC and James C. Thomas, III in his official capacity as treasurer knowingly and willfully violated 52 U.S.C. § 30122 and 52 U.S.C. § 30104(b)(3)(A) by accepting a contribution in the name of another and failing to properly report that contribution;

5. Find reason to believe that James C. Thomas, III in his personal capacity knowingly and willfully violated 52 U.S.C. § 30122 and 52 U.S.C. § 30104(b)(3)(A) by accepting a contribution in the name of another and failing to properly report that contribution;

6. Approve the attached Factual and Legal Analyses;

7. Approve the Subpoenas to Produce Documents and Orders to Submit Written Answers to James C. Thomas, III, American Conservative Union, and Gregg Keller; and

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8. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Kathleen Guith

7/5/17
Date

Kathleen M. Guith
Associate General Counsel

Mark Shonkwiler

Mark Shonkwiler
Assistant General Counsel

Antoinette Fuoto

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Attachment
1) Factual and Legal Analysis for Government Integrity LLC
2) Factual and Legal Analysis for Now or Never PAC and James C. Thomas, III in his official capacity as treasurer
3) Factual and Legal Analysis for James C. Thomas, III

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1 **FEDERAL ELECTION COMMISSION**
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3 **FACTUAL AND LEGAL ANALYSIS**
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5 MUR: 6920

6 RESPONDENT: Government Integrity LLC

7 **I. INTRODUCTION**

8 This matter was generated by a Complaint alleging that an Unknown Respondent made a
9 $1.71 million contribution to Now or Never PAC in the name of American Conservative Union
10 ("ACU"), in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b). The Commission found
11 reason to believe that Unknown Respondent violated 52 U.S.C. § 30122. Based on the available
12 information, the Commission now substitutes Government Integrity LLC in the place of
13 "Unknown Respondent" in the Commission's previous reason-to-believe finding in this matter
14 and finds that Government Integrity LLC acted in a knowing and willful manner.

15 **II. FACTUAL BACKGROUND**

16 Now or Never PAC, an independent expenditure only committee, reported that on
17 October 31, 2012, it received a $1.71 million contribution from ACU,[1] a 501(c)(4) social welfare
18 organization.[2] In May 2014, apparently after an independent auditor reviewed its 2012
19 finances,[3] ACU filed an Amended 2012 IRS Form 990 that disclosed the $1.71 contribution to
20 Now or Never PAC as "a political contribution received by the Organization and promptly and
21 directly delivered to a separate political organization."[4] The Complaint alleged that Unknown

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[1] Now or Never PAC, 2012 Post-General Report (Dec. 6, 2012) at 6; *see also* Compl. ¶ 14 (Feb. 27, 2015).

[2] ACU Resp. at 1 (Apr. 23, 2015).

[3] Compl. ¶¶ 15-17, Exs. B (Conlon & Associates Independent Auditor's Report, Apr. 9, 2014) and C (ACU Amended Form 990, May 12, 2014).

[4] Compl Ex. C at Schedule O, Schedule C.

Respondent is the true source of the $1.71 million contribution made in ACU's name to Now or Never PAC.[5] Based on ACU's representation that the contribution to Now or Never PAC was "a political contribution received by the Organization and promptly and directly delivered to a separate political organization,"[6] the Commission found reason to believe that an Unknown Respondent violated 52 U.S.C. § 30122 and commenced an investigation.

During the investigation, the Commission learned that James C. Thomas, III, who is also the treasurer of Now or Never PAC, wired $1,800,000 to ACU from an account with the name Government Integrity LLC and provided an employee of ACU instructions for wiring the $1,710,000 contribution to Now or Never PAC. Based on this information, OGC designated GI LLC and Thomas, as agent of GI LLC, as respondents and notified them of the Complaint. GI LLC did not respond to the notification.

III. LEGAL ANALYSIS

The Act prohibits a person from knowingly permitting his or her name to be used to effect a contribution in the name of another.[7] The requirement that a contribution be made in the name of its true source promotes Congress's objective of ensuring the complete and accurate disclosure by candidates and committees of the political contributions they receive.[8] Courts have uniformly rejected the assertion that "only the person who actually transmits funds . . . makes the

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[5] Compl. ¶¶ 12, 17.

[6] ACU Resp. at 2 (Apr. 23, 2015).

[7] 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.

[8] *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.").

contribution,"[9] recognizing that "it is implausible that Congress, in seeking to promote transparency, would have understood the relevant contributor to be [an] intermediary who merely transmitted the campaign gift."[10] Accordingly, the Act and the Commission's regulations provide that a person who provides funds to another for the purposes of contributing to a candidate or committee "makes" the resulting contribution.[11] If an intermediary merely plays a "ministerial role" in transmitting a contribution, the contribution should not be attributed to the intermediary but instead to the original source.[12]

Based on ACU's representation that the contribution to Now or Never PAC was "a political contribution received by the Organization and promptly and directly delivered to a separate political organization," the Commission found reason to believe that Unknown Respondent violated 52 U.S.C. § 30122. Because the Commission identified Government Integrity LLC as the "Organization" that provided ACU with the political contribution that it immediately delivered to Now or Never PAC, the Commission substitutes Government Integrity LLC in the place of "Unknown Respondent" in the Commission's previous finding that there is reason to believe that Unknown Respondent violated 52 U.S.C. § 30122 by making a contribution in the name of another. The Commission also finds reason to believe that Government Integrity LLC's actions were knowing and willful. A violation of the Act is knowing and willful if the "acts were committed with full knowledge of all the relevant facts and

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9 *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

10 *O'Donnell*, 608 F.3d at 554.

11 *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.").

12 *O'Donnell*, 608 F.3d at 550.

a recognition that the action in prohibited by law."[13] This does not require proving knowledge of the specific statute or regulations that the respondent allegedly violated.[14] Instead, it is sufficient that the respondent "acted voluntarily and was aware that his conduct was unlawful."[15]

Thomas, as agent of GI LLC, played a central role in the conduit scheme. He not only assisted GI LLC in making a contribution in the name of another, but did so for the benefit of the PAC for which he is treasurer. His dual role in both the making of and receipt of the contribution demonstrates his knowledge of the conduit scheme. Thomas has served as the treasurer of Now or Never PAC since 2012, when the group filed its Statement of Organization.[16] He is also the treasurer of at least one other federal committee,[17] and two Missouri political committees.[18] As such, we presume his he has significant knowledge of campaign finance law, and the Commission has previously afforded weight to a respondent's knowledge of campaign finance law in finding that a respondent knowingly and willfully violated 52 U.S.C. § 30122. Because Thomas's conduct is attributable to GI LLC,[19] the Commission finds that GI LLC knowingly and willfully violated 52 U.S.C. § 30122.

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[13] 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

[14] *United States v. Danielczyk*, 917 F.Supp.2d 573, 579 (E .D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

[15] *Id.*

[16] *See* Statement of Organization, Now or Never PAC (Feb. 22, 2012).

[17] *See* Statement of Organization, Courageous Conservatives PAC (Sept. 16, 2015).

[18] *See, e.g.*, Eli Yokley, *Missouri Candidate Picks Up Where She Left Off After Rival's Suicide*, NEW YORK TIMES (March 29, 2015) (identifying Thomas as the treasurer of two different Missouri committees).

[19] *See* note 7 *supra*.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR: 6920

RESPONDENT: Now or Never PAC and James C. Thomas, III in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a Complaint alleging that an Unknown Respondent made a $1.71 million contribution to Now or Never PAC in the name of American Conservative Union ("ACU"), in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b). The Commission previously took no action at that time on the allegation that Now or Never PAC may have knowingly accepted a contribution made in the name of another, in violation of 52 U.S.C. § 30122, and the Office of General Counsel ("OGC") commenced an investigation. Based on the available information, the Commission now finds reason to believe that Now or Never PAC and James C. Thomas, III, in his official capacity as treasurer, violated 52 U.S.C. § 30122 by knowingly accepting a contribution in the name of another, and violated 52 U.S.C. § 30104(b)(3)(A) by failing to accurately report the contribution. The Commission further finds that these violations were knowing and willful.

II. FACTUAL BACKGROUND

Now or Never PAC, an independent expenditure only committee, reported that on October 31, 2012, it received a $1.71 million contribution from ACU, a 501(c)(4) social welfare organization. James C. Thomas, III is treasurer of Now or Never PAC. In May 2014, apparently after an independent auditor reviewed its 2012 finances, ACU filed an Amended 2012 IRS Form 990 that disclosed the $1.71 contribution to Now or Never PAC as "a political contribution received by the Organization and promptly and directly delivered to a separate political

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organization." The Complaint alleged that Unknown Respondent is the true source of the $1.71 million contribution made in ACU's name to Now or Never PAC. Based on ACU's representation that the contribution to Now or Never PAC was "a political contribution received by the Organization and promptly and directly delivered to a separate political organization," the Commission found reason to believe that an Unknown Respondent violated 52 U.S.C. § 30122 and commenced an investigation.

During the investigation, the Commission learned that Thomas wired $1,800,000 to ACU from an account with the name Government Integrity LLC ("GI LLC") and provided an employee of ACU instructions for wiring the $1,710,000 contribution to Now or Never PAC.

III. LEGAL ANALYSIS

A. There is Reason to Believe Now or Never PAC Knowingly Accepted and Misreported a Contribution in the Name of Another

The Act prohibits a committee from knowingly accepting a contribution made in the name of another.[1] The Act also requires political committees such as Now or Never PAC to file regular disclosure reports.[2] Committees must disclose itemized breakdowns of receipts, including the name and address of each person who has made any contribution in an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of any such contribution.[3] In addition, if a committee treasurer discovers after receipt of an apparently legitimate contribution that it was made in the name of another, the treasurer must

[1] 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(iv).

[2] 52 U.S.C. § 30104(b).

[3] *Id.* § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(3)-(4).

refund or disgorge the contribution within 30 days.[4] The requirement that a contribution be made in the name of its true source promotes Congress's objective of ensuring the complete and accurate disclosure by candidates and committees of the political contributions they receive.[5]

Thomas, the treasurer of Now or Never PAC, appears to have both wired the $1.8 million from GI LLC to ACU and provided instructions on wiring the $1.71 million contribution from ACU to Now or Never PAC on the same day. His role as treasurer of Now or Never PAC leaves little doubt that Now or Never PAC knew that ACU was not the true source of the $1.71 million contribution. Accordingly, the Commission finds reason to believe that Now or Never PAC and James C. Thomas, III, in his official capacity as treasurer, violated 52 U.S.C. § 30122 by knowingly accepting a contribution in the name of another, and violated 52 U.S.C. § 30104(b)(3)(A) by failing to accurately report the contribution.

B. There is Reason to Believe Now or Never PAC Acted Knowingly and Willfully

The Commission further finds that the potential violations by Now or Never PAC were knowing and willful. A violation of the Act is knowing and willful if the "acts were committed with full knowledge of all the relevant facts and a recognition that the action in prohibited by law."[6] This does not require proving knowledge of the specific statute or regulations that the respondent allegedly violated.[7] Instead, it is sufficient that the respondent "acted voluntarily and

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[4] 11 C.F.R. § 103.3(b)(2); *see* MUR 5643 (Carter's Inc.) (informing recipient committee of its obligation to refund or disgorge illegal contribution); Advisory Op. 1996-05 (Jay Kim for Congress) (allowing for disgorgement of illegal contributions to U.S. Treasury as an alternative to refunding contributions).

[5] *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.").

[6] 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

[7] *United States v. Danielczyk*, 917 F.Supp.2d 573, 579 (E .D. Va. Jan. 9, 2013) (quoting *Bryan v. United*

1 was aware that his conduct was unlawful."[8]

2 Here, Thomas played a central role in the conduit scheme. He not only assisted GI LLC
3 in making a contribution in the name of another, but did so for the benefit of the PAC for which
4 he is treasurer. His dual role in both the making of and receipt of the contribution demonstrates
5 his knowledge of the conduit scheme. Thomas has served as the treasurer of Now or Never PAC
6 since 2012, when the group filed its Statement of Organization.[9] He is also the treasurer of at
7 least one other federal committee[10] and two Missouri political committees.[11] As such, we
8 presume he has significant knowledge of campaign finance law. The Commission has
9 previously afforded weight to a respondent's knowledge of campaign finance law in finding that
10 a respondent knowingly and willfully violated 52 U.S.C. § 30122. Based on the foregoing, the
11 Commission finds that Now or Never PAC and Thomas, in his official capacity as treasurer,
12 knowingly and willfully violated 52 U.S.C. §§ 30122 and 30104(b)(3)(A).

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States, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

8 *Id.*

9 *See* Statement of Organization, Now or Never PAC (Feb. 22, 2012).

10 *See* Statement of Organization, Courageous Conservatives PAC (Sept. 16, 2015).

11 *See, e.g.*, Eli Yokley, *Missouri Candidate Picks Up Where She Left Off After Rival's Suicide*, NEW YORK TIMES (March 29, 2015) (identifying Thomas as the treasurer of two different Missouri committees).

1 **FEDERAL ELECTION COMMISSION**
2
3 **FACTUAL AND LEGAL ANALYSIS**
4
5 MUR: 6920
6
7 RESPONDENT: James C. Thomas, III

8 **I. INTRODUCTION**

9 This matter was generated by a Complaint alleging that an Unknown Respondent made a
10 $1.71 million contribution to Now or Never PAC in the name of American Conservative Union
11 ("ACU"), in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b). Based on the available
12 information, the Commission now finds that James C. Thomas, III knowingly and willfully violated
13 52 U.S.C. § 30122 by knowingly helping or assisting in the making of a contribution in the name of
14 another and by knowingly accepting a contribution made in the name of another, and that he
15 knowingly and willfully violated 52 U.S.C. § 30104(b)(3)(A) in his personal capacity by failing to
16 accurately report that contribution as treasurer of the recipient committee.

17 **II. FACTUAL BACKGROUND**

18 Now or Never PAC, an independent expenditure only committee, reported that on
19 October 31, 2012, it received a $1.71 million contribution from ACU,[1] a 501(c)(4) social welfare
20 organization.[2] James C. Thomas, III is the treasurer of Now or Never PAC. In May 2014,
21 apparently after an independent auditor reviewed its 2012 finances,[3] ACU filed an Amended
22 2012 IRS Form 990 that disclosed the $1.71 contribution to Now or Never PAC as "a political
23 contribution received by the Organization and promptly and directly delivered to a separate

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[1] Now or Never PAC, 2012 Post-General Report (Dec. 6, 2012) at 6; *see also* Compl. ¶ 14 (Feb. 27, 2015).

[2] ACU Resp. at 1 (Apr. 23, 2015).

[3] Compl. ¶¶ 15-17, Exs. B (Conlon & Associates Independent Auditor's Report, Apr. 9, 2014) and C (ACU Amended Form 990, May 12, 2014).

political organization."[4] The Complaint alleged that Unknown Respondent is the true source of the $1.71 million contribution made in ACU's name to Now or Never PAC.[5] Based on ACU's representation that the contribution to Now or Never PAC was "a political contribution received by the Organization and promptly and directly delivered to a separate political organization,"[6] the Commission found reason to believe that an Unknown Respondent violated 52 U.S.C. § 30122 and commenced an investigation.

During the investigation, the Commission learned that Thomas wired $1,800,000 to ACU from an account with the name Government Integrity LLC ("GI LLC") and provided an employee of ACU instructions for wiring the $1,710,000 contribution to Now or Never PAC. Based on this information, OGC designated Thomas as a respondent and notified him of the Complaint.

III. LEGAL ANALYSIS

A. There is Reason to Believe James C. Thomas, III Knowingly Helped or Assisted in Making a Contribution in the Name of Another

As previously determined by the Commission, there is reason to believe that Unknown Respondent violated 52 U.S.C. § 30122 by making a $1.71 million contribution to Now or Never PAC in the name of ACU. Because GI LLC made the contribution with Thomas's assistance, the Commission finds reason to believe that Thomas violated 52 U.S.C. § 30122 by knowingly helping or assisting any person in making a contribution in the name of another.[7] Thomas sent

[4] Compl Ex. C at Schedule O, Schedule C.

[5] Compl. ¶¶ 12, 17.

[6] ACU Resp. at 2 (Apr. 23, 2015).

[7] *See* 11 C.F.R. § 110.4(b)(iii). Because we do not yet know the precise nature of the relationship between GI LLC and Thomas, particularly whether Thomas provided any of the funds used to make the contribution, Thomas

the contribution to ACU from GI LLC while also providing wiring instructions for the contribution to be delivered to Now or Never PAC. Though Thomas argues that the Complaint has not demonstrated GI LLC's or Thomas's intent to make a contribution in the name of another, as noted, the factual record shows that ACU characterized the contribution to Now or Never PAC as a "political contribution received by the Organization and promptly and directly delivered to a separate political organization."[8] Accordingly, the current record provides reason to believe that Thomas violated 52 U.S.C. § 30122 by knowingly helping or assisting any person in making a contribution in the name of another.[9]

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B. The Commission Has Found That There is Reason to Believe James C. Thomas, III, in his Official Capacity as Treasurer of Now or Never PAC, Knowingly Accepted and Misreported a Contribution in the Name of Another

The Act prohibits a committee from knowingly accepting a contribution made in the name of another.[10] The Act also requires political committees such as Now or Never PAC to file regular disclosure reports.[11] Committees must disclose itemized breakdowns of receipts, including the name and address of each person who has made any contribution in an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of any such contribution.[12] In addition, if a committee treasurer discovers after receipt of an apparently legitimate contribution that it was made in the name of another, the treasurer must

may have violated the Act's prohibition on knowingly helping or assisting a person in making a contribution in the name of another. *See* 11 C.F.R. § 110.4(b)(iii).

[8] ACU Resp. at 2 (Apr. 23, 2015).

[9] *See* 11 C.F.R. § 110.4(b)(iii).

[10] 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(iv).

[11] 52 U.S.C. § 30104(b).

[12] *Id.* § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(3)-(4).

refund or disgorge the contribution within 30 days.[13] The requirement that a contribution be made in the name of its true source promotes Congress's objective of ensuring the complete and accurate disclosure by candidates and committees of the political contributions they receive.[14]

Thomas, the treasurer of Now or Never PAC, appears to have both wired the $1.8 million from GI LLC to ACU and provided instructions on wiring the $1.71 million contribution from ACU to Now or Never PAC on the same day. Based on this information, the Commission has found reason to believe that Thomas, in his official capacity as treasurer of Now or Never PAC, violated 52 U.S.C. § 30122 by knowingly accepting a contribution in the name of another, and violated 52 U.S.C. § 30104(b)(3)(A) by failing to accurately report the contribution.

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C. There is Reason to Believe Thomas Acted Knowingly and Willfully and that Thomas Violated the Act in his Personal Capacity

The Commission also finds that the potential violations by Thomas were knowing and willful. A violation of the Act is knowing and willful if the "acts were committed with full knowledge of all the relevant facts and a recognition that the action in prohibited by law."[15] This does not require proving knowledge of the specific statute or regulations that the respondent allegedly violated.[16] Instead, it is sufficient that the respondent "acted voluntarily and was aware

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[13] 11 C.F.R. § 103.3(b)(2); *see* MUR 5643 (Carter's Inc.) (informing recipient committee of its obligation to refund or disgorge illegal contribution); Advisory Op. 1996-05 (Jay Kim for Congress) (allowing for disgorgement of illegal contributions to U.S. Treasury as an alternative to refunding contributions).

[14] *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.").

[15] 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

[16] *United States v. Danielczyk*, 917 F.Supp.2d 573, 579 (E .D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

that his conduct was unlawful."[17]

Here, Thomas played a central role in the conduit scheme. He not only assisted GI LLC in making a contribution in the name of another, but did so for the benefit of the PAC for which he is treasurer. His dual role in both the making of and receipt of the contribution demonstrates his knowledge of the conduit scheme. Thomas has served as the treasurer of Now or Never PAC since 2012, when the group filed its Statement of Organization.[18] He is also the treasurer of at least one other federal committee[19] and two Missouri political committees.[20] As such, we presume he has significant knowledge of campaign finance law. The Commission has previously afforded weight to a respondent's knowledge of campaign finance law in finding that a respondent knowingly and willfully violated 52 U.S.C. § 30122. Based on the foregoing, the Commission finds that Thomas knowingly and willfully violated 52 U.S.C. § 30122 by knowingly helping or assisting in the making of a contribution in the name of another and by accepting a contribution made in the name of another, and that he knowingly and willfully violated 52 U.S.C. § 30104(b)(3)(A) by failing to accurately report that contribution as treasurer of the recipient committee.

Finally, the Commission finds Thomas personally liable for his role in accepting a contribution in the name of another on behalf of Now or Never PAC. The Commission has stated that, "[d]ue to their 'pivotal role,' treasurers may be held personally liable for failing to

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17 *Id.*

18 *See* Statement of Organization, Now or Never PAC (Feb. 22, 2012).

19 *See* Statement of Organization, Courageous Conservatives PAC (Sept. 16, 2015).

20 *See, e.g.*, Eli Yokley, *Missouri Candidate Picks Up Where She Left Off After Rival's Suicide*, NEW YORK TIMES (March 29, 2015) (identifying Thomas as the treasurer of two different Missouri committees).

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fulfill their responsibilities under the Act and the Commission's regulations."[21] Thus, the Commission has determined as a matter of policy that it will proceed against treasurers in their personal capacity:

> [W]here information indicates that the treasurer knowingly and willfully violated an obligation that the Act or regulations specifically impose on treasurers or where the treasurer recklessly failed to fulfill the duties imposed by law, or where the treasurer has intentionally deprived himself or herself of the operative facts giving rise to the violation.[22]

Because Thomas's conduct on behalf of Now or Never PAC was knowing and willful, the Commission finds reason to believe that Thomas knowingly and willfully violated 52 U.S.C. §§ 30122 and 30104(b)(3)(A) in his personal capacity.

[21] Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. at 5 (Jan. 3, 2005).

[22] *Id.* at 3-4.