



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUL 13 2017

**ELECTRONIC MAIL AND FIRST CLASS U.S. MAIL**

Todd Graves, Eddie Greim, and Lucinda Luetkemeyer, Esqs.

Graves Garrett LLC

1100 Main Street, Suite 2700

Kansas City, MO 64105

tgraves@gravesgarrett.com

RE: MUR 6920  
Now or Never PAC  
James C. Thomas, III in his official  
capacity as treasurer

Dear Messrs. Graves and Greim, and Ms. Luetkemeyer:

On March 4, 2015, the Federal Election Commission notified your clients, Now or Never PAC and James C. Thomas, III in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon review of the allegations contained in the complaint, the Commission, on July 11, 2017, found that there is reason to believe 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 30104(b)(3)(A), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

Your clients may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel within 15 days of receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. See 52 USC § 30109(a)(4).

Please note that you and your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If your clients are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending

170444345116

declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into in order to 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 delivered to the respondent(s). Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. Extensions will not be granted absent your clients' agreement to toll the statute of limitations. Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Antoinette Fuoto, the attorney assigned to this matter, at (202) 694-1634 or [afuoto@fec.gov](mailto:afuoto@fec.gov).

On behalf of the Commission,

  
Steven T. Walther  
Chairman

Enclosures  
Factual and Legal Analysis

---

<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 MUR: 6920

6  
7 RESPONDENT: Now or Never PAC and James C. Thomas, III in his official capacity as  
8 treasurer

9  
10 **I. INTRODUCTION**

11 This matter was generated by a Complaint alleging that an Unknown Respondent made a  
12 \$1.71 million contribution to Now or Never PAC in the name of American Conservative Union  
13 ("ACU"), in violation of 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b). The Commission  
14 previously took no action at that time on the allegation that Now or Never PAC may have  
15 knowingly accepted a contribution made in the name of another, in violation of 52 U.S.C.  
16 § 30122, and the Office of General Counsel ("OGC") commenced an investigation. Based on  
17 the available information, the Commission now finds reason to believe that Now or Never PAC  
18 and James C. Thomas, III, in his official capacity as treasurer, violated 52 U.S.C. § 30122 by  
19 knowingly accepting a contribution in the name of another, and violated 52 U.S.C.  
20 § 30104(b)(3)(A) by failing to accurately report the contribution. The Commission further finds  
21 that these violations were knowing and willful.

22 **II. FACTUAL BACKGROUND**

23 Now or Never PAC, an independent expenditure only committee, reported that on  
24 October 31, 2012, it received a \$1.71 million contribution from ACU, a 501(c)(4) social welfare  
25 organization. James C. Thomas, III is treasurer of Now or Never PAC. In May 2014, apparently  
26 after an independent auditor reviewed its 2012 finances, ACU filed an Amended 2012 IRS Form  
27 990 that disclosed the \$1.71 contribution to Now or Never PAC as "a political contribution  
28 received by the Organization and promptly and directly delivered to a separate political

CONFIDENTIAL

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

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

### 10 III. LEGAL ANALYSIS

#### 11 A. There is Reason to Believe Now or Never PAC Knowingly Accepted and 12 Misreported a Contribution in the Name of Another

13  
14 The Act prohibits a committee from knowingly accepting a contribution made in the  
15 name of another.<sup>1</sup> The Act also requires political committees such as Now or Never PAC to file  
16 regular disclosure reports.<sup>2</sup> Committees must disclose itemized breakdowns of receipts,  
17 including the name and address of each person who has made any contribution in an aggregate  
18 amount or value in excess of \$200 within the calendar year, together with the date and amount of  
19 any such contribution.<sup>3</sup> In addition, if a committee treasurer discovers after receipt of an  
20 apparently legitimate contribution that it was made in the name of another, the treasurer must

---

<sup>1</sup> 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(iv).

<sup>2</sup> 52 U.S.C. § 30104(b).

<sup>3</sup> *Id.* § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(3)-(4).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

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

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

12 **B. There is Reason to Believe Now or Never PAC Acted Knowingly and**  
13 **Willfully**  
14

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

---

<sup>4</sup> 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).

<sup>5</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>6</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

<sup>7</sup> *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.”<sup>8</sup>

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.<sup>9</sup> He is also the treasurer of at  
7 least one other federal committee<sup>10</sup> and two Missouri political committees.<sup>11</sup> 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).

---

*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)).

<sup>8</sup> *Id.*

<sup>9</sup> See Statement of Organization, Now or Never PAC (Feb. 22, 2012).

<sup>10</sup> See Statement of Organization, Courageous Conservatives PAC (Sept. 16, 2015).

<sup>11</sup> 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).