



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

JUL 13 2017

**ELECTRONIC MAIL AND CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

James C. Thomas, III, Esq.  
c/o Kory Langhofer, Esq.  
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RE: MUR 6920  
James C. Thomas, III

Dear Mr. Langhofer:

On April 20, 2017, the Federal Election Commission notified your client, James C. Thomas, III 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 client at that time.

Upon review of the allegations contained in the complaint, and information provided by your client, the Commission, on July 11, 2017, found that there is reason to believe your client 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 client may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the Office of the General Counsel within 15 days of your receipt of this notification. Any additional materials or statements your client wishes to submit should accompany the response to the order and subpoena. 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 client 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 client is interested in pursuing pre-probable cause conciliation, you should make such a request in 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


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Commission either proposing an agreement in settlement of the matter or recommending 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 client's 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 you wish the investigation 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

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<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).

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1 **FEDERAL ELECTION COMMISSION**  
2  
3 **FACTUAL AND LEGAL ANALYSIS**  
4

5 MUR: 6920

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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,<sup>1</sup> a 501(c)(4) social welfare  
20 organization.<sup>2</sup> 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,<sup>3</sup> 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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<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).

1 political organization.”<sup>4</sup> The Complaint alleged that Unknown Respondent is the true source of  
2 the \$1.71 million contribution made in ACU’s name to Now or Never PAC.<sup>5</sup> 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,”<sup>6</sup>  
5 the Commission found reason to believe that an Unknown Respondent violated 52 U.S.C.  
6 § 30122 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 Based on this information, OGC designated Thomas as a respondent and notified him of the  
11 Complaint.

12 **III. LEGAL ANALYSIS**

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

15 As previously determined by the Commission, there is reason to believe that Unknown  
16 Respondent violated 52 U.S.C. § 30122 by making a \$1.71 million contribution to Now or Never  
17 PAC in the name of ACU. Because GI LLC made the contribution with Thomas’s assistance,  
18 the Commission finds reason to believe that Thomas violated 52 U.S.C. § 30122 by knowingly  
19 helping or assisting any person in making a contribution in the name of another.<sup>7</sup> Thomas sent  
20

<sup>4</sup> Compl Ex. C at Schedule O, Schedule C.

<sup>5</sup> Compl. ¶¶ 12, 17.

<sup>6</sup> ACU Resp. at 2 (Apr. 23, 2015).

<sup>7</sup> 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

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

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

13  
14 The Act prohibits a committee from knowingly accepting a contribution made in the  
15 name of another.<sup>10</sup> The Act also requires political committees such as Now or Never PAC to file  
16 regular disclosure reports.<sup>11</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>12</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

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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).

<sup>8</sup> ACU Resp. at 2 (Apr. 23, 2015).

<sup>9</sup> *See* 11 C.F.R. § 110.4(b)(iii).

<sup>10</sup> 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b)(iv).

<sup>11</sup> 52 U.S.C. § 30104(b).

<sup>12</sup> *Id.* § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(3)-(4).

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1 refund or disgorge the contribution within 30 days.<sup>13</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>14</sup>

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

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

12  
13 The Commission also finds that the potential violations by Thomas were knowing and  
14 willful. A violation of the Act is knowing and willful if the "acts were committed with full  
15 knowledge of all the relevant facts and a recognition that the action is prohibited by law."<sup>15</sup> This  
16 does not require proving knowledge of the specific statute or regulations that the respondent  
17 allegedly violated.<sup>16</sup> Instead, it is sufficient that the respondent "acted voluntarily and was aware

<sup>13</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>14</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>15</sup> 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

<sup>16</sup> *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)).

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1 that his conduct was unlawful.”<sup>17</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>18</sup> He is also the treasurer of at  
7 least one other federal committee<sup>19</sup> and two Missouri political committees.<sup>20</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 Thomas knowingly and willfully violated 52 U.S.C. § 30122 by  
12 knowingly helping or assisting in the making of a contribution in the name of another and by  
13 accepting a contribution made in the name of another, and that he knowingly and willfully  
14 violated 52 U.S.C. § 30104(b)(3)(A) by failing to accurately report that contribution as treasurer  
15 of the recipient committee.

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

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<sup>17</sup> *Id.*

<sup>18</sup> See Statement of Organization, Now or Never PAC (Feb. 22, 2012).

<sup>19</sup> See Statement of Organization, Courageous Conservatives PAC (Sept. 16, 2015).

<sup>20</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).

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1 fulfill their responsibilities under the Act and the Commission's regulations."<sup>21</sup> Thus, the  
2 Commission has determined as a matter of policy that it will proceed against treasurers in their  
3 personal capacity:

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

9 Because Thomas's conduct on behalf of Now or Never PAC was knowing and willful, the  
10 Commission finds reason to believe that Thomas knowingly and willfully violated 52 U.S.C.  
11 §§ 30122 and 30104(b)(3)(A) in his personal capacity.

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<sup>21</sup> Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. at 5 (Jan. 3, 2005).

<sup>22</sup> *Id.* at 3-4.

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