MEMORANDUM

TO: The Commission

FROM: Lisa Stevenson
Acting General Counsel

BY: Kathleen Guith
Associate General Counsel for Enforcement

Mark Shonkwiler
Assistant General Counsel

Antoinette Fuoto
Staff Attorney

SUBJECT: MUR 6920 (American Conservative Union, et al.)

RE: Circulation of Discovery Documents

I. INTRODUCTION

On January 24, 2017, the Commission found reason to believe that American Conservative Union (“ACU”) violated 52 U.S.C. § 30122 by knowingly permitting its name to be used to effect a $1.71 million contribution in the name of another to Now or Never PAC, an independent expenditure-only political committee. The Commission also found reason to believe that Unknown Respondents violated 52 U.S.C. § 30122 by making the contribution in the name of another. Following the Commission’s finding, the Office of General Counsel (“OGC”) commenced an investigation to determine the identity of the undisclosed donor and the circumstances surrounding the contribution. On July 11, 2017, the Commission substituted Government Integrity, LLC (“GI LLC”) in the name of Unknown Respondent, found reason to believe that Now or Never PAC and James C. Thomas, III (“Thomas”) in his official capacity as treasurer, and in his personal capacity, knowing and willfully accepted a contribution in the name of another and failed to properly report that contribution, and found reason to believe that Thomas knowingly and willfully assisted in the making of a contribution in the name of another.

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2 ACU’s IRS filings indicated that the funds used for the contribution came from an undisclosed donor.
in his individual capacity. The Commission also authorized subpoenas to ACU, ACU’s former executive director, and Thomas. In response to those subpoenas, we have learned of additional parties who may have been involved in the transaction and have information relevant to our investigation.

II. DISCUSSION

Counsel for Thomas provided OGC with interrogatory answers and responsive documents, and on July 30, 2017, provided additional information during a telephone conference. We now seek discovery for several parties named in Thomas’s response.

A. Incentive Discretionary Trust

In response to our request for information regarding the known principals and agents of GI LLC, Thomas states that an attorney, Charles Harris, “acting as trustee of an entity named Incentive Discretionary Trust” (the “Trust”) appointed GI LLC’s now-deceased principal. Additionally, in response to our questioning of whether any person or entity provided the funds GI LLC used to contribute $1.8 million to ACU, Thomas responded that GI LLC “received a donation of approximately $2.5 million on or around the date” of the transfer from GI LLC to ACU and “is reasonably certain that the funds were provided to GI LLC by the Incentive Discretionary Trust.” Accordingly, we now seek information to establish the source of the funds from Incentive Discretionary Trust used to effect the contribution from GI LLC to ACU. We are requesting this information to ascertain whether GI LLC is the true source of the contribution that ACU made to Now or Never PAC. Given the relevance of this information and the statute of limitations in this matter — the transaction occurred on October 31, 2017 — we propose the attached order to compel the Trust to provide that information.

B. Axiom Strategies and Jeff Roe

In his Response, Thomas states that Axiom Strategies “has served as a political consultant to Now or Never PAC and has participated in the PAC’s operations and financial activities, and the terms of Mr. Thomas’s engagement with Now or Never PAC expressly authorize him to carry out the instructions of Axiom Strategies in performing his duties as treasurer.” Thomas also provided several emails regarding the transaction that are addressed to employees of Axiom. And, during a phone call, counsel for Thomas suggested that Thomas acted at the direction of Jeff Roe, Axiom’s founder, and that Axiom and Gregg Keller, ACU’s former executive director, were the likely architects of the transaction. Accordingly, we now seek information regarding Axiom’s knowledge of the transaction and any documents relating to the transaction. This information is relevant to our recommendations regarding whether the various parties acted knowing and willfully. We therefore propose the attached orders to compel Axiom Strategies and Jeff Roe to provide documents and answer questions regarding the transaction.

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3 See Certification, MUR 6920 (ACU, et al.) (July 12, 2017).
4 See Thomas Response to Subpoena at 4 (July 28, 2017)
5 Id at 7.