

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4) MUR 6920
5 American Conservative Union, *et al.*)
6)
7)
8

9 **THIRD GENERAL COUNSEL’S REPORT**

10
11 **I. ACTIONS RECOMMENDED**

12 We recommend that the Commission: 1) find reason to believe that Incentive
13 Discretionary Trust and Charles Harris, in his official capacity as trustee, (“IDT”) violated
14 52 U.S.C. § 30122 by making or assisting in the making of a contribution in the name of another;
15 and 2) authorize the Office of the General Counsel to file a civil suit for relief in United States
16 District Court against IDT and Harris, in his official capacity as trustee, for failure to comply
17 with the Commission’s Subpoena and Order to produce documents and answer interrogatories.

18 **II. BACKGROUND**

19 The Federal Election Commission (the “Commission”) received a Complaint alleging
20 that, on October 31, 2012, an Unknown Respondent made a \$1.71 million contribution to Now
21 or Never PAC in the name of American Conservative Union (“ACU”), in violation of
22 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b).¹ Based on ACU’s representation in its IRS Form
23 990 that the contribution to Now or Never PAC was “a political contribution received by the
24 Organization and promptly and directly delivered to a separate political organization,”² the

¹ While other Respondents in this matter have agreed to varying amounts of tolling, the statute of limitations as to IDT, which has not tolled, will run on October 31, 2017.

If IDT does not agree to toll, we anticipate sending out a probable cause to believe (“PCTB”) General Counsel’s Brief as to both IDT and Government Integrity LLC within the next week. This would allow the Commission to consider a possible PCTB determination prior to the expiration of the statute of limitations on October 31, 2017.

² See Compl. (Feb. 27, 2015). Ex. C at Schedule O, Schedule C (ACU Amended Form 990, May 12, 2014).

1 Commission found reason to believe that an Unknown Respondent made a contribution in the
2 name of another.³

3 During the initial stage of its investigation, the Commission learned that Government
4 Integrity, LLC (“GI LLC”) wired \$1.8 million to ACU on the same date ACU wired \$1.71
5 million to Now or Never PAC, and that James C. Thomas, III, the treasurer of Now or Never
6 PAC, also acted as the agent of GI LLC in wiring the funds to ACU. Based on this information,
7 the Office of General Counsel (“OGC”) notified GI LLC and Thomas of the Complaint and the
8 Commission’s findings as to Unknown Respondents. The Commission subsequently found
9 reason to believe that GI LLC violated 52 U.S.C. § 30122 by making a contribution in the name
10 of another, that Thomas knowingly and willfully violated 52 U.S.C. § 30122 by assisting in the
11 making of, accepting, and misreporting a contribution in the name of another, and that Now or
12 Never PAC violated 52 U.S.C. § 30122 by knowingly and willfully accepting and misreporting a
13 contribution in the name of another.⁴

14 As set forth below, OGC has recently learned that IDT provided GI LLC with the funds
15 that GI LLC then immediately sent to ACU. The record establishes a reasonable inference that
16 IDT’s purpose for funding GI LLC was to make a contribution to Now or Never PAC. Based on
17 this information, we recommend that the Commission find reason to believe that IDT and Harris,

³ See Factual & Legal Analysis (Unknown Respondent), MUR 6920 (Feb. 7, 2017).

⁴ See Factual & Legal Analyses (Government Integrity LLC; Thomas; Now or Never PAC), MUR 6920 (July 13, 2017).

1 in his official capacity as trustee, violated 52 U.S.C. § 30122 by either making or assisting in
2 making a contribution in the name of another.⁵

3 **III. FACTS**

4 **A. Relevant Parties**

5 American Conservative Union is registered with the IRS as a social welfare organization
6 under section 501(c)(4) of the Internal Revenue Code,⁶ and is not registered with the
7 Commission as a political committee. ACU describes itself as the oldest and largest
8 conservative grassroots organization in the United States. It received donations totaling
9 \$8,485,503 in 2012.⁷ ACU states that prior to its receipt of funds from GI LLC, it had a
10 combined total balance of approximately \$538,000 across its bank accounts.⁸ In 2012, ACU's
11 executive director was Gregg Keller.

12 Now or Never PAC is an independent expenditure-only committee that filed its Statement
13 of Organization with the Commission on February 21, 2012. Thomas, who is both an attorney
14 and an accountant, has been Now or Never PAC's treasurer since its organization in 2012.
15 During the 2012 cycle, Now or Never PAC raised \$8,250,500 and reported \$7,760,174 in
16 independent expenditures. The group raised \$540,000 during the 2014 cycle and reported
17 \$714,811 in independent expenditures. Now or Never PAC has been largely inactive since that
18 time. It has not reported independent expenditures since then, and raised only \$8,000 in 2016.

⁵ IDT received notice of the Complaint along with the Commission's reason to believe findings as to Unknown Respondents and the later reason to believe findings as to GI LLC. This notice resulted in IDT's trustee, Charles Harris, signing a designation of counsel for GI LLC. Since that time, IDT counsel has participated in multiple joint calls with OGC and counsel for GI LLC,

⁶ ACU Resp. at 1 (April 23, 2015).

⁷ *See* Compl., Ex. C at Part I.

⁸ ACU Resp. at 1 (April 9, 2017).

1 Axiom Strategies is a Missouri-based political consulting firm that has connections to
2 both Now or Never PAC and GI LLC. Axiom Strategies provides political consulting services,
3 including fundraising services, to Now or Never PAC.⁹ Axiom Strategies has “participated in
4 [Now or Never PAC’s] operations and financial activities,” and Thomas’s terms of engagement
5 with Now or Never PAC “expressly authorize” him to carry out the instructions of Axiom
6 Strategies.¹⁰ Thomas represents that he primarily took direction from Axiom Strategies’
7 founder, Jeff Roe. Axiom Strategies reportedly also provided GI LLC with recommendations
8 regarding the distribution of its funds.¹¹

9 GI LLC is a Delaware limited liability corporation that was established in September
10 2012.¹² GI LLC’s only known organizational purpose was to support conservative organizations
11 and causes.¹³ Christopher W. Byrd, who died in 2014, served as the “sole manager and officer”
12 of GI LLC in 2012.¹⁴ Byrd retained Thomas to prepare organizational paperwork, serve as
13 attorney and perform various tasks on behalf of GI LLC.¹⁵ Thomas states that all tasks he
14 performed for GI LLC were conducted at the request and under the direction of Byrd.¹⁶

15 IDT is an entity that appears to have formed and financed GI LLC.¹⁷ Charles Harris,
16 acting as trustee of IDT, appointed Byrd as the “sole nominee” of GI LLC in or around

⁹ Axiom Interrogatory Answers at 2 (Sept. 1, 2017).

¹⁰ Thomas Interrogatory Answers at 7 (July 28, 2017).

¹¹ *Id.* at 2.

¹² GI LLC incorporated on September 10, 2012. *See* Delaware Secretary of State.

¹³ Thomas Interrogatory Answers at 3.

¹⁴ *Id.* at 1-2.

¹⁵ *Id.* at 1, 3.

¹⁶ *Id.* at 1.

¹⁷ In an August 24, 2017 telephone conversation with OGC, counsel for IDT referred to GI LLC as being “100% owned” by IDT.

1 September 2012, when the LLC was formed.¹⁸ IDT funded GI LLC, wiring it \$2.5 million only
2 seven weeks after the LLC's formation.¹⁹ Counsel for GI LLC recently informed OGC that GI
3 LLC is dependent on IDT for information about their client.²⁰

4 **B. Subpoena and Order to IDT**

5 On August 10, 2017, the Commission served IDT, through its trustee, Harris, with a
6 Subpoena and Order requesting the production of documents and the answers to interrogatories
7 regarding its role in the transaction and the source of the funds used to make a contribution to
8 Now or Never PAC. IDT's response was due on August 25, 2017. The day before IDT's
9 response was due, IDT's newly retained counsel requested an extension of seventeen days.
10 Because of statute of limitations concerns, OGC was unable to grant the request. Nonetheless,
11 counsel for IDT stated that IDT would not respond to the Subpoena and Order until September
12 11, 2017.²¹ OGC explained that it considered IDT to be in non-compliance, but informed
13 counsel that IDT's non-compliance could be mitigated by providing the Commission with
14 documents and information on a rolling basis, or by otherwise making partial productions prior
15 to September 11, 2017. IDT declined to do so and reiterated its intention to respond by
16 September 11, 2017. Contrary to those representations, however, IDT did not respond by
17 September 11, 2017, and instead informed OGC the following day that it "cannot comply" with
18 the Commission's Subpoena and Order. IDT urged that the Commission resolve GI LLC's

¹⁸ Thomas Interrogatory Answers at 2. A "nominee" is "[a] party who holds bare legal title for the benefit of others or who receives and distributes funds for the benefit of others." Black's Law Dictionary (10th ed. 2014).

¹⁹ See Thomas Interrogatory Answers at 4.

²⁰ Both GI LLC and IDT have characterized GI LLC as a dormant organization that was resurrected by IDT solely to respond to the current matter. Counsel for GI LLC has stated on multiple occasions that it does not have access to information regarding the transaction. IDT has made no such statement.

²¹ Letter from Mike Dry at 2 (Aug. 31, 2017).

1 liability without obtaining further information from IDT,

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3 ²² OGC has informed IDT and GI LLC of the need for further fact-finding—*i.e.*, in the
4 form of IDT's Subpoena and Order response—as well as Commission approval,

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6 **C. Contribution to Now or Never PAC**

7 On or very shortly before October 31, 2012, IDT wired \$2.5 million to GI LLC.²³ On
8 October 31, 2012, Thomas emailed consultants for Now or Never PAC, stating “[t]he 2.5 million
9 is here. I am about to wire \$1.8 million to American Conservative Union.”²⁴ Later that same
10 day and immediately after ACU's receipt of \$1.8 million from GI LLC, ACU wired \$1.71
11 million to Now or Never PAC.

12 Contemporaneous emails among Thomas, Axiom Strategies consultants, and ACU's
13 Keller indicate that the parties agreed to the three-step transaction to effect a contribution in the
14 name of another. For example, shortly after receiving confirmation of the wire transfer from GI
15 LLC to ACU, Keller wrote to Thomas and Axiom consultants to state, “[w]ill take action

²² Letter from Mike Dry at 2 (September 12, 2017). Prior to that correspondence, IDT made reference to significant privilege issues involved in this matter. OGC requested any non-privileged information and a privilege log. IDT has not complied, and in its most recent letter, does not provide a reason for not complying with the Subpoena and Order.

²³ See Thomas Interrogatory Answers at 4; Thomas Documents at JT2017-0003. It is unclear if GI LLC, which had only been formed the previous month, had any funds prior to receiving that transfer.

²⁴ JT2017-0003.

1 immediately upon receipt.”²⁵ He followed up with that email minutes later, stating that he’d
2 “need wiring instructions,” presumably to transfer funds from ACU to Now or Never PAC.²⁶

3 Now or Never PAC, acting through its treasurer, Thomas, reported ACU as the source of
4 the contribution in its post-general report. ACU’s Director of Operations later characterized the
5 funds sent to Now or Never PAC as a “pass through” in an email asking Keller if ACU had to
6 make its own filing with the Commission in connection with the transaction.²⁷ In May 2014,
7 apparently after an independent auditor reviewed its 2012 finances,²⁸ ACU filed an Amended
8 2012 IRS Form 990 that disclosed the \$1.71 million contribution to Now or Never PAC as “a
9 political contribution received by the Organization and promptly and directly delivered to a
10 separate political organization.”²⁹

11 None of the Respondents or witnesses have offered an explanation as to the reasons for
12 the multistep structure of the transfers from IDT to GI LLC, from GI LLC to ACU, and from
13 ACU to Now or Never PAC. As noted above, GI LLC’s sole officer, Christopher Byrd, is
14 deceased. Thomas, who was GI LLC’s attorney, states that he was not a party to
15 communications with ACU about what it would do with the GI LLC funds. Further, ACU has
16 indicated that the personnel with knowledge of the transaction are no longer employed at ACU
17 and former ACU Executive Director Keller has refused to comply with a Commission Subpoena
18 and Order to answer interrogatories, which sought information regarding the transaction. Axiom

²⁵ JT2017-0011.

²⁶ ACU Document Submission at FEC000006. A Now or Never PAC consultant responded with instructions for wiring funds to Now or Never PAC.

²⁷ ACU Second Document Submission, November 30, 2012 email from Melissa Bowman to Gregg Keller.

²⁸ Compl. ¶¶ 15-17, Exs. B (Conlon & Associates Independent Auditor’s Report, Apr. 9, 2014) and C.

²⁹ *Id.*, Ex. C at Schedule O, Schedule C. ACU states that its auditors included that language without consulting with contemporaneous ACU staff, but does not affirmatively dispute its auditors’ characterization of the transaction.

1 Strategies acknowledges that it both recommended the transfer of funds from GI LLC to ACU
2 and solicited the nearly simultaneous transfer of funds from ACU to Now or Never PAC.³⁰
3 Axiom states, however, that it did not communicate with either Thomas or Byrd its belief that
4 ACU would donate to Now or Never PAC.³¹

5 **IV. LEGAL ANALYSIS**

6 **A. The Legal Standard**

7 The Act prohibits a person from making a contribution in the name of another.³² The
8 Commission has included in its regulations illustrations of activities that constitute making a
9 contribution in the name of another:

- 10 (i) Giving money or anything of value, all or part of which was provided
11 to the contributor by another person (the true contributor) without
12 disclosing the source of money or the thing of value to the recipient
13 candidate or committee at the time the contribution is made; or
- 14 (ii) Making a contribution of money or anything of value and attributing
15 as the source of the money or thing of value another person when in
16 fact the contributor is the source.

17 Under Commission regulations, that prohibition extends to knowingly helping or
18 assisting “any person in making a contribution in the name of another.”³³ The Commission has
19 explained that the provision addressing such a contribution applies to “those who initiate or

³⁰ See Axiom Interrogatory Answers at 4, 7.

³¹ See *Id.* at 7.

³² 52 U.S.C. § 30122; see also 11 C.F.R. § 110.4(b). The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and other organizations. 52 U.S.C. § 30101(11); 11 C.F.R. § 100.10.

³³ 11 C.F.R. § 110.4(b)(1)(iii).

1 instigate or have some significant participation in a plan or scheme to make a contribution in the
2 name of another[.]”³⁴

3 The requirement that a contribution be made in the name of its true source promotes
4 Congress's objective of ensuring the complete and accurate disclosure by candidates and
5 committees of the political contributions they receive.³⁵ Courts have uniformly rejected the
6 assertion that “only the person who actually transmits funds . . . makes the contribution,”³⁶
7 recognizing that “it is implausible that Congress, in seeking to promote transparency, would have
8 understood the relevant contributor to be [an] intermediary who merely transmitted the campaign
9 gift.”³⁷ Accordingly, the Act and the Commission's regulations provide that a person who
10 provides funds to another for the purposes of contributing to a candidate or committee “makes”
11 the resulting contribution.³⁸

12 **B. The Record Supports a Reasonable Inference that IDT Made a Contribution in**
13 **the Name of Another**

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15 The undisputed facts demonstrate that IDT transferred funds to GI LLC, that GI LLC
16 then almost immediately forwarded part of those funds to ACU, that ACU used those funds to
17 make a \$1.71 million contribution to Now or Never PAC, and that Now or Never PAC reported
18 the contribution as made by ACU. Contemporaneous emails among Thomas—who served both
19 as agent of GI LLC and treasurer of Now or Never PAC—ACU, and consultants for Now or

³⁴ Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989).

³⁵ 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.”).

³⁶ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

³⁷ *O'Donnell*, 608 F.3d at 554.

³⁸ 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.”).

1 Never PAC strongly suggest the parties entered into an agreement by which ACU would transfer
2 funds to Now or Never PAC only after receiving those funds from GI LLC. Such an agreement
3 is further supported by ACU's later characterization of the funds as a "pass through," as well as
4 by its financial situation at the time of the transaction.

5 The record supports a reasonable inference that IDT was the true source of the funds GI
6 LLC funneled through ACU. First, IDT appears to have formed GI LLC to distribute political
7 contributions. According to Thomas, an agent of GI LLC, the LLC's only known purpose was to
8 support partisan organizations and causes.³⁹ Neither GI LLC nor IDT claim, nor does the record
9 show, that GI LLC conducts any other business. Instead, the only information in the record is
10 that GI LLC acted as a transfer agent for IDT's contributions. The available facts do not indicate
11 that GI LLC generated income, made investments, held assets, or had the means to wire \$1.8
12 million without IDT's infusion of funds.⁴⁰ Accordingly, there is reason to believe that IDT
13 formed and funded GI LLC with the purpose of making IDT's political contributions, and that
14 IDT is the true source of the funds GI LLC wired to ACU for the purpose of making a
15 contribution to Now or Never PAC.

³⁹ See Thomas Interrogatory Answers at 3.

⁴⁰ See Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 12, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) (Apr. 1, 2016) ("Petersen, Hunter, Goodman SOR") ("[T]he Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions. These facts would suggest the corporate entity is a straw donor and not the true source of the contribution."); see also Statement of Reasons of Vice Chairman Steven T. Walther and Commissioners Ann M. Ravel and Ellen L. Weintraub at 4, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8 LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (Prakazrel "Pras" Michel, *et al.*) (Apr. 1, 2016) ("Walther, Ravel, Weintraub SOR") ("An LLC cannot act on its own; it must do so at the direction of a person. Where an individual is the source of the funds for a contribution and the LLC merely conveys the funds at the direction of that person, the Act and Commission regulations require that the true source — the name of the individual rather than the name of the LLC — be disclosed as the contributor."). Here, it was not the name of the conduit LLC that the recipient committee improperly disclosed, but a second intermediary, ACU.

1 Second, the temporal proximity between GI LLC's formation and its contribution to
2 ACU, viewed in the context of GI LLC's purpose, suggests that it received \$2.5 million from
3 IDT specifically to funnel funds through ACU to Now or Never PAC. GI LLC was formed in
4 September 2012, only seven weeks prior to the October 31, 2012 transaction. As noted, we
5 know of no other activities that GI LLC engaged in either prior to or after the October
6 transaction. That IDT funded GI LLC shortly after GI LLC's formation suggests GI LLC was
7 used to funnel IDT's funds to their ultimate recipient.

8 The timeline and structure of the transaction itself further supports an inference that IDT
9 may have been the true source of the funds at issue. IDT funded GI LLC shortly after GI LLC's
10 formation, providing it with \$2.5 million on or very shortly before the same day GI LLC wired
11 \$1.8 million to ACU, as evidenced by Thomas confirming to the other parties that "the \$2.5
12 million is here" before executing GI LLC's wire transfer to ACU. Additionally, that the
13 contribution required a *three*-step transfer—from IDT to GI LLC, from GI LLC to ACU, and
14 finally from ACU to Now or Never PAC—suggests that the parties went through significant
15 lengths to disguise the true source of the funds.⁴¹ Notably, OGC has repeatedly asked both GI
16 LLC and IDT to provide an alternative explanation for the structure of the three-step transaction,
17 and neither entity has done so.

18 Additionally, none of the information in the record overcomes the inference drawn from

⁴¹ See Petersen, Hunter, Goodman SOR at 2 ("[T]o vindicate the purpose underlying section 30122 without violating First Amendment rights, the proper focus in these matters is whether the funds used to make a contribution were intentionally funneled through a closely held corporation or corporate LLC for the purpose of making a contribution that evades the Act's reporting requirements, making the individual, not the corporation or corporate LLC, the true source of the funds. Thus, in matters alleging section 30122 violations against such entities, the Commission will examine whether the available evidence establishes the requisite purpose."); see also Statement of Reasons of Commissioners Ann M. Ravel and Ellen L. Weintraub (April 13, 2016) (writing that proof of subjective intent is not necessary to prove a violation of 52 U.S.C. § 30122).

1 the available facts, *i.e.*, that IDT made a contribution in the name of another.⁴² IDT and GI LLC
2 have not addressed the provenance of the funds that GI LLC transferred to ACU; they do not
3 aver that the funds were not provided to the LLC for the purpose of making a contribution to
4 Now or Never PAC.

5 Indeed, IDT has refused to comply with the Commission's Subpoena and Order to
6 produce documents and interrogatory answers to shed further light on this matter. Given IDT's
7 refusal, the Commission may make an adverse inference regarding IDT's role in the subject of
8 the investigation.⁴³ OGC requested that IDT provide information regarding, *inter alia*, IDT's
9 purpose for transferring the funds to GI LLC, the source of its \$2.5 million transfer to GI LLC,
10 and IDT's relationship with GI LLC. IDT first refused to respond to the Subpoena and Order by
11 the Commission's due date, and instead stated that it would respond two weeks later. When that
12 day came, IDT still had not responded, and waited an additional day to inform OGC that it
13 "cannot comply."

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⁴² A factually similar matter provides a useful contrast: In MUR 6930, the sole member of an LLC that contributed to an independent-expenditure-only political committee provided a detailed, sworn affidavit averring that any funds held by the LLC were *not* provided to it for the specific purpose of making political contributions. Because the information in the record was sufficient to rebut the allegations, we recommended that the Commission make a no reason to believe finding. *See* First Gen. Counsel's Report at 8-10, MUR 6930 (Prakazrel "Pras" Michel, *et al.*); The Commission was equally divided on that issue, however, and closed the file. *See* Certification, MUR 6930 (Prakazrel "Pras" Michel, *et al.*) (Feb. 25, 2016); *see also* Walther, Ravel, Weintraub SOR.

⁴³ *See Int'l Union v. Nation Labor Relations Board*, 459 F.2d 1329, 1336 (D.C.Cir. 1972). In the context of administrative law proceedings, the agency need not resort to enforcement of a subpoena in order to make the inference. *Id.* at 1339. "The adverse-inference rule, we said is a 'well recognized means available for vindicating [an agency's] power to require the production of relevant documents short of a subpoena enforcement proceeding.'" *Atlantic Richfield Company v. United States Department of Energy*, 769 F.2d 771, 794 (D.C.Cir. 1985).

1 Accordingly, the Commission is entitled to draw an adverse inference from IDT's refusal to
2 comply, and to conclude that IDT made a contribution in the name of another to Now or Never
3 PAC. This inference further bolsters the record's information indicating that IDT provided GI
4 LLC with funds for the specific purpose of making a contribution in the name of another. We
5 therefore recommend that the Commission find that IDT and Harris, as trustee, violated
6 52 U.S.C. § 30122 by making a contribution in the name of another.

7 **C. Alternatively, the Record Likewise Supports a Reasonable Inference that IDT**
8 **Assisted in Making a Contribution in the Name of Another**

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10 Even if currently unknown facts were to suggest that GI LLC, and not IDT, was the true
11 source of the funds, the record provides a reasonable inference that IDT assisted in making a
12 contribution in the name of another. The Commission has noted that the regulation prohibiting
13 assisting in the making of a contribution in the name of another applies to those who "initiate or
14 instigate or have some significant participation" in making such a contribution.⁴⁴

15 IDT and its trustee formed the LLC shortly before the date of the transaction, and in
16 appointing Byrd as nominee, rather than principal, it appears IDT's trustee retained control over
17 GI LLC. Further, IDT has refused to respond to the Commission's Subpoena and Order seeking
18 information as to its relationship with and involvement in GI LLC, allowing the Commission to
19 draw an adverse inference regarding the level of involvement IDT and Harris had in the activities
20 of GI LLC.⁴⁵ Such involvement suggests that Harris, as trustee, may have played a significant
21 role in assisting GI LLC in making the contribution. Further, IDT transferred funds to GI LLC
22 on or very shortly before the same day GI LLC transferred funds to ACU, suggesting IDT may

⁴⁴ Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989).

⁴⁵ *See supra*, note 43.

1 have initiated or instigated the contribution to Now or Never PAC. Accordingly, we recommend
2 that the Commission find reason to believe that IDT and Harris, as trustee, either made or
3 assisted in the making of a contribution in the name of another, in violation of
4 52 U.S.C. § 30122.

5 **V. CIVIL SUIT AUTHORITY**

6 On August 10, 2017, the Commission issued a legally enforceable Subpoena and Order
7 requesting the production of documents and answers to interrogatories to IDT and Harris.⁴⁶ The
8 Commission's Subpoena and Order sought to learn additional information regarding IDT's role
9 in the transaction and the source of the funds. IDT has refused to comply.⁴⁷ IDT is a significant
10 party in the current matter. It provided the funds used to make a contribution in the name of
11 another, and has represented that it may have information about GI LLC's activities that GI LLC
12 no longer possess. Accordingly, this Office recommends that the Commission authorize the
13 filing of a subpoena enforcement action in United States District Court against IDT and Harris,
14 in his official capacity as trustee.⁴⁸

⁴⁶ An administrative agency's subpoena or order will be enforced provided that it was issued for a proper purpose, the information sought is reasonably relevant to the purpose, and the statutory procedures were observed. *See United States v. Powell*, 379 U.S. 48, 57-58 (1964); *United States v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950); *Government of Territory of Guam v. Sea-Land Serv.*, 958 F.2d 1150, 1154-55 (D.C. Cir. 1992).

⁴⁷ *See supra*, Part III.B.

⁴⁸ *See* 52 U.S.C. § 30107(b).

1 **VI. RECOMMENDATIONS**

- 2 1. Find reason to believe that Incentive Discretionary Trust and Charles Harris, as trustee,
3 violated 52 U.S.C. § 30122 by making a contribution in the name of another or by
4 assisting in the making of a contribution in the name of another;
- 5 2. Authorize the Office of the General Counsel to file a subpoena enforcement suit in
6 United States District Court against Incentive Discretionary Trust and Charles Harris, as
7 trustee;
- 8 3. Approve the Factual & Legal analysis;
- 9 4. Approve the appropriate letters;
- 10 5. Approve the use of compulsory process as necessary.

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Date

Lisa Stevenson
Acting General Counsel

Kathleen M. Guith
Kathleen Guith
Associate General Counsel
for Enforcement

Mark Shonkwiler
Mark Shonkwiler
Assistant General Counsel

Antoinette Fuoto
Antoinette Fuoto
Attorney