



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT - 4 2017

VIA ELECTRONIC AND OVERNIGHT MAIL

Kory Langhofer, Esq.
Statecraft PLLC
649 North Fourth Avenue, First Floor
Phoenix, AZ 85003

RE: MUR 6920
James C. Thomas, III

Dear Mr. Langhofer:

On July 11, 2017 the Federal Election Commission found reason to believe that your client, James C. Thomas, III knowingly and willfully violated 52 U.S.C. §§ 30122 and 30104(b)(3)(A) by knowingly assisting in making a contribution in the name of another, knowingly accepting a contribution in the name of another, and misreporting that contribution. We have sent to you, under separate cover, the pre-probable cause conciliation offer approved by the Commission.

Although the Commission has offered to resolve this matter prior to a finding of probable cause, the Office of the General Counsel is also prepared to recommend that the Commission find probable cause to believe that Mr. Thomas knowingly and willfully violated 52 U.S.C. §§ 30122 and 30104(b)(3)(A). Therefore, we have enclosed a brief stating the position of the General Counsel on the legal and factual issues underlying this Office's probable cause recommendation while you consider possible resolution of this matter in pre-probable cause conciliation.

Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of

the General Counsel ordinarily will not give extensions beyond 20 days. The Office of the General Counsel will not give extensions absent an agreement to toll the applicable statute of limitations.

You may also request additional information gathered by the Commission in the course of its investigation in this matter. *See* Agency Procedure for Disclosure of Documents and Information in the Enforcement Process, 76 Fed. Reg. 34986 (June 15, 2011).

In addition, you may also request an oral hearing before the Commission. *See* Procedural Rules for Probable Cause Hearings, 72 Fed. Reg. 64919 (Nov. 19, 2007) and Amendment of Agency Procedures for Probable Cause Hearings, 74 Fed. Reg. 55443 (Oct. 28, 2009). Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing. Any request for a hearing must be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address. In this matter, a request for a probable cause hearing will require the Respondent to toll the applicable statute of limitations. *See* Procedural Rules for Probable Cause Hearings, 72 Fed. Reg. 64919, 64920 (Nov. 19, 2007). The Commission will notify you within 30 days of your request for a hearing as to whether or not the request has been granted.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a post-probable cause conciliation agreement.

If you have any questions please contact Antoinette Fuoto, the attorney assigned to this matter, at (202) 694-1634.

Sincerely,

A handwritten signature in black ink, appearing to read "LJS by KB".

Lisa J. Stevenson
Acting General Counsel

Enclosures
General Counsel's Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 6920

James C. Thomas, III

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

The Federal Election Commission (the “Commission”) received 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). 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,”¹ the Commission found reason to believe that an Unknown Respondent made a contribution in the name of another.

During the course of the Office of General Counsel's ("OGC's") subsequent investigation, the Commission learned that Now or Never PAC's treasurer, James C. Thomas, III, wired \$1.8 million from Government Integrity, LLC ("GI LLC") to ACU on the same date ACU provided the \$1.71 million contribution to Now or Never PAC. Based on Thomas's dual role in transferring the funds from GI LLC to ACU and serving as treasurer of Now or Never PAC, the Commission found reason to believe that Thomas knowingly and willfully violated 52 U.S.C. § 30122 by helping or assisting in the making of a contribution in the name of another and accepting the resulting contribution, and knowingly and willfully violated

¹ See Compl. (Feb. 27, 2015), Ex. C at Sched. O, Sched. C (ACU Amended Form 990, May 12, 2014).

52 U.S.C. § 30104(b)(3)(A) by failing to accurately report that contribution as treasurer of the recipient committee.²

As set forth below, OGC is now prepared to recommend that the Commission find probable cause to believe that Thomas knowingly and willfully violated 52 U.S.C. §§ 30122 and 30104(b)(3)(A) by assisting in the making of a contribution in the name of another, knowingly accepting a contribution in the name of another, and misreporting that contribution.

II. FACTS

A. Background

James C. Thomas, III, an attorney and an accountant, is the treasurer of Now or Never PAC. He has served as treasurer since the PAC's formation in February 2012.³ Thomas is the treasurer of at least one other federal committee,⁴ has received disbursements from multiple federal committees for legal services,⁵ and has served as the treasurer of approximately twenty Missouri political committees.⁶

In 2012, Thomas also provided legal and other professional services to GI LLC.⁷ GI LLC is a Delaware limited liability company that was established in September 2012. GI LLC's only known organizational purpose was to support conservative organizations and causes.⁸

² See Factual and Legal Analysis, MUR 6920 (Thomas) (July 13, 2017).

³ See Statement of Organization, Now or Never PAC (Feb. 21, 2012).

⁴ See Statement of Organization, Courageous Conservatives PAC (Sept. 16, 2015).

⁵ See, e.g., Amended July Quarterly Report, Billy Long for Congress (May 6, 2010); Amended October Quarterly Report, Barnett for Congress (Jan. 28, 2011); Termination Report, Wink for Congress (Jan. 31, 2011); October Quarterly Report, Anders for Congress (Oct. 13, 2011); April Quarterly Report, Jay Jordan for Congress (Apr. 14, 2012).

⁶ See Missouri Ethics Commission Treasurer Search, *available at* http://mec.mo.gov/MEC/Campaign_Finance/CF11_SearchComm.aspx (last visited Aug. 23, 2017).

⁷ Thomas Interrogatory Answers at 1, 3 (July 28, 2017).

⁸ *Id.* at 3.

Christopher W. Byrd, who died in 2014, served as the “sole manager and officer” of GI LLC in 2012.⁹ Byrd retained Thomas to prepare organizational paperwork, serve as attorney and perform various tasks on behalf of GI LLC.¹⁰ Thomas states that all tasks he performed for GI LLC were conducted at the request and under the direction of Byrd.¹¹

The Incentive Discretionary Trust (“IDT”) is an entity that established and appears to control GI LLC. Charles Harris, acting as trustee of IDT, appointed Byrd as the “sole nominee” of GI LLC in or around September 2012, when the LLC was formed.¹² IDT also funded GI LLC, providing it with a \$2.5 million wire transfer in October 2012.¹³

Now or Never PAC is an independent expenditure-only committee that filed its Statement of Organization with the Commission on February 21, 2012. During the 2012 election cycle, Now or Never PAC raised \$8,250,500 and reported \$7,760,174 in independent expenditures. The group raised \$540,000 during the 2014 election cycle and made \$714,811 in independent expenditures. Now or Never PAC has been largely inactive since the 2014 cycle. It has not reported making any independent expenditures since then, and raised only \$8,000 in 2016.

Axiom Strategies is a Missouri-based political consulting firm that has connections to both Now or Never PAC and GI LLC. Axiom Strategies provides political consulting services, including fundraising services to Now or Never PAC.¹⁴ Axiom Strategies has “participated in [Now or Never PAC’s] operations and financial activities,” and Thomas’s terms of engagement

⁹ *Id.* at 1-2.

¹⁰ *Id.* at 1, 3.

¹¹ *Id.* at 1.

¹² *Id.* 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).

¹³ See Thomas Interrogatory Answers at 4.

¹⁴ Axiom Interrogatory Answers at 2 (Sept. 1, 2017).

1 with Now or Never PAC “expressly authorize” him to carry out the instructions of Axiom
2 Strategies.¹⁵ Thomas represents that he primarily took direction from Axiom Strategies’ founder,
3 Jeff Roe. Axiom Strategies also reportedly provided advisory services to GI LLC, by making
4 “recommendations as to how GI LLC could distribute its funds.”¹⁶ Specifically, Axiom
5 Strategies recommended that GI LLC contribute funds to ACU, and also solicited ACU to make
6 a contribution to Now or Never PAC.¹⁷

7 American Conservative Union is registered with the IRS as a social welfare organization
8 under section 501(c)(4) of the Internal Revenue Code, and is not registered with the Commission
9 as a political committee. ACU describes itself as the oldest and largest conservative grassroots
10 organization in the United States. It received donations totaling \$8,485,503 in 2012.¹⁸ In 2012,
11 ACU’s executive director was Gregg Keller.

12 **B. The October 31, 2012 Contribution**

13 On or around October 31, 2012, GI LLC received a \$2.5 million wire transfer from
14 IDT.¹⁹ On October 31, 2012, GI LLC transferred \$1.8 million to ACU. On the same day,
15 shortly after receiving those funds, ACU transferred \$1.71 million to Now or Never PAC.

16 The transfers from GI LLC to ACU and from ACU to Now or Never PAC occurred
17 within an extremely short window over the course of a single day. That morning, ACU’s
18 executive director Gregg Keller and Axiom Strategies consultant Jeff Roe sent a series of emails

15 Thomas Interrogatory Answers at 7.

16 *Id.* at 2.

17 See Axiom Interrogatory Answers at 4, 7. Axiom Strategies states that it did not communicate its belief that ACU would donate to Now or Never PAC to either Thomas or Byrd. *Id.* at 7.

18 See Compl., Ex. C at Part I.

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

1 confirming an apparent arrangement to transfer funds from GI LLC to ACU, and then from ACU
2 to Now or Never PAC. At 9:41 am, Keller received an email from ACU's banking
3 representative instructing him that, "[w]hen the funds arrive, we'll reach out to you immediately
4 for notification," and requesting "the outgoing wire instructions" to prepare a subsequent transfer
5 for Keller's signature.²⁰ Keller forwarded that email to Roe at 9:43 am, who forwarded it on
6 to Thomas and Axiom Strategies consultant Sarah Hoeller at 9:46 am.²¹

7 Later, at 11:11 am, Thomas emailed Roe and Hoeller to confirm the receipt of funds from
8 IDT, writing "[t]he 2.5 million is here. I am about to wire \$1.8 million to American Conservative
9 Union."²² At 11:14 am, Thomas emailed Roe and Hoeller requesting ACU's wiring address.
10 Roe forwarded that message to Keller, who confirmed the address.²³ Thomas then emailed a
11 bank representative wiring instructions for the transfer of \$1.8 million from GI LLC to ACU.²⁴
12 Thomas states that he wired the funds to ACU at the direction of Byrd.²⁵ After authorizing the
13 transfer, Thomas emailed Keller, Roe, and Hoeller to confirm that the "[m]oney should be on its
14 way shortly."²⁶

²⁰ Thomas Documents at JT2017-0001.

²¹ *Id.*

²² Thomas Documents at JT2017-0003.

²³ Thomas Documents at JT2017-0005.

²⁴ Thomas Documents at JT2017-0015. Thomas states that he did not exercise independent authority or control over GI LLC's funds, and that he believes the decision to wire \$1.8 million from GI LLC to ACU was made by Byrd. Thomas Interrogatory Answers at 3. He further states that Byrd did not provide any information to him regarding the reasons or circumstances for that decision. *Id.* Thomas asserts that he "was never informed of any prior arrangement or agreement between GI LLC and ACU that the funds would be used to finance a contribution to by ACU to Now or Never PAC." *Id.* at 5.

²⁵ Thomas Interrogatory Answers at 4.

²⁶ Thomas Documents at JT2017-0007.

1 Shortly after receiving confirmation of the wire transfer from GI LLC to ACU, Keller
2 wrote to Thomas, Roe, and Hoeller to state, “[w]ill take action immediately upon receipt.”²⁷ He
3 followed up with that email minutes later, stating that he’d “need wiring instructions,”
4 presumably to transfer funds from ACU to Now or Never PAC.²⁸ Prior to its receipt of the wire
5 from GI LLC, ACU had a combined total balance of approximately \$538,000 across its bank
6 accounts.

7 Later that afternoon, at 1:34 pm, Roe emailed Thomas and Hoeller to inquire into the
8 status of the “acu dough,” stating “[w]e need the mo wire out...”²⁹ Thomas replied that he had
9 “just checked,” that the funds had not arrived, and “[i]f they have a federal wire number from
10 their end, I can back track it[.]”³⁰ Thomas followed up on that email twelve minutes later,
11 writing to Roe, Hoeller, and Keller to confirm that Now or Never PAC received the
12 \$1.71 million.³¹

13 Now or Never PAC reported receiving \$1.71 million from ACU in its 2012 post-general
14 election disclosure report. Thomas, the treasurer of Now or Never PAC, acknowledges that he
15 “assumed that this contribution may have consisted in part of funds ACU had previously

²⁷ Thomas Documents at JT2017-0011.

²⁸ Thomas Documents at JT2017-0013. Hoeller responded with instructions for wiring funds to Now or Never PAC.

²⁹ Thomas Documents at JT2017-0018. OGC’s review of Now or Never PAC’s disclosure records from October 31, 2012 found that “the mo wire” may be a reference to an advertising buy in support of Missouri Senate candidate Todd Akin. *See* Now or Never PAC 24/48 Hour Notice of Independent Expenditures, Schedule E (Oct. 31, 2012). Now or Never PAC spent \$803,775 in support of Akin on October 31, 2012. *Id.*

³⁰ *Id.*

³¹ Thomas Documents at JT2017-0020.

1 received from GI LLC[.]”³² Thomas further acknowledges that he “may have erred” in reporting
2 ACU as the true source of the \$1.71 million contribution to Now or Never PAC.³³

3 ACU’s Director of Operations later characterized the funds sent to Now or Never PAC as
4 a “pass through” in an email asking Keller if ACU had to make its own filing with the
5 Commission in connection with the transaction.³⁴ In May 2014, apparently after an independent
6 auditor reviewed its 2012 finances,³⁵ ACU filed an Amended 2012 IRS Form 990 that disclosed
7 the \$1.71 contribution to Now or Never PAC as “a political contribution received by the
8 Organization and promptly and directly delivered to a separate political organization.”³⁶ ACU
9 has not affirmatively disputed its auditors’ characterization of the transaction. None of the
10 parties or witnesses involved have offered an explanation for the multi-step structure of the
11 transaction.

12 **III. LEGAL ANALYSIS**

13 The evidence shows that there is probable cause to believe that Thomas knowingly and
14 willfully assisted in making a \$1.71 million contribution in the name of another to Now or Never
15 PAC, and that he knowingly and willfully accepted and misreported that contribution as treasurer
16 of Now or Never PAC. The facts demonstrate that Thomas wired funds from GI LLC to ACU in
17 order to fund a \$1.71 million contribution to Now or Never PAC, served as a point person on the
18 day of the transactions, and, as treasurer of Now or Never PAC, reported those funds as coming

³² Thomas Interrogatory Answers at 5. Thomas asserts, however, that he believed that “ACU’s disposition of the funds was the product of its own independent decisionmaking[.]” *Id.*

³³ *Id.* at 9. Thomas claims that “excessive personal and professional demands on his time and attention” may have caused his reporting error, but states that his error was not knowing and willful. *Id.*; *see also id.* at 8.

³⁴ ACU Second Document Submission, November 30, 2012 email from Melissa Bowman to Gregg Keller.

³⁵ Compl. ¶¶ 15-17, Exs. B (Conlon & Associates Independent Auditor’s Report, Apr. 9, 2014) and C.

³⁶ *Id.*, Ex. C at Schedule O, Schedule C.

1 from ACU despite his knowledge that Now or Never PAC was required to accurately disclose its
2 contributors.

3 **A. There is Probable Cause to Believe that Thomas Knowingly Assisted in Making a**
4 **Contribution in the Name of Another**
5

6 The Federal Election Campaign Act of 1971, as amended (“Act”), prohibits any person
7 from making a contribution in the name of another person, knowingly permitting his or her name
8 to be used to effect such a contribution, or knowingly accepting such a contribution.³⁷ The
9 Commission’s regulations further prohibit any person from knowingly helping or assisting in
10 making a contribution in the name of another.³⁸ The Commission has explained that the
11 provision addressing such a contribution applies to “those who initiate or instigate or have some
12 significant participation in a plan or scheme to make a contribution in the name of another[.]”³⁹

13 The requirement that a contribution be made in the name of its true source promotes
14 Congress’s objective of ensuring the complete and accurate disclosure by candidates and
15 committees of the political contributions they receive.⁴⁰ Courts have uniformly rejected the
16 assertion that “only the person who actually transmits funds . . . makes the contribution,”⁴¹
17 recognizing that “it is implausible that Congress, in seeking to promote transparency, would have
18 understood the relevant contributor to be [an] intermediary who merely transmitted the campaign

³⁷ 52 U.S.C. § 30122.

³⁸ 11 C.F.R. § 110.4(b)(1)(iii).

³⁹ Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,105 (Aug. 17, 1989).

⁴⁰ 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.”).

⁴¹ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

1 gift.”⁴² Accordingly, the Act and the Commission’s regulations provide that a person who gives
2 funds to another for the purpose of contributing to a committee “makes” the resulting
3 contribution.⁴³ If an intermediary merely plays a “ministerial role” in transmitting a
4 contribution, the contribution should not be attributed to the intermediary but instead to the
5 original source.⁴⁴

6 The record establishes probable cause to believe that the Respondents arranged a multi-
7 step transfer of funds which resulted in a contribution in the name of another designed to evade
8 reporting the true source of the funds. Consultants for Axiom Strategies, who worked for Now
9 or Never PAC, both recommended to GI LLC that it provide funds to ACU and solicited the
10 corresponding transfer of funds from ACU to Now or Never PAC. Apparently acting on those
11 suggestions, Respondents executed the dual transfers within a short period over the course of a
12 single day. Without the transfer from GI LLC, ACU would have lacked the funds needed to
13 make a \$1.71 million federal contribution.

14 The existence of an agreement for ACU to use the funds it received from GI LLC for a
15 contribution to Now or Never PAC is consistent with ACU’s Director of Operations’ later
16 characterization of the contribution as a “pass through.” Such an agreement is further confirmed
17 by ACU’s amended tax filing in which it characterized the \$1.71 contribution to Now or Never
18 PAC as “a political contribution received by the Organization and promptly and directly
19 delivered to a separate political organization.”⁴⁵

⁴² *O'Donnell*, 608 F.3d at 554; *see also Doe v. Reed*, 561 U.S. 186, 199 (2010) (“Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

⁴³ *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.”).

⁴⁴ *See O'Donnell*, 608 F.3d at 550.

⁴⁵ Compl., Ex. C at Schedule O, Schedule C.

1 Contemporaneous emails documenting the transactions provide probable cause to believe
2 that Thomas knowingly assisted in the making of the contribution in the name of ACU with
3 funds provided to ACU from GI LLC. Thomas, acting on behalf of GI LLC while also serving
4 as Now or Never PAC's treasurer, wired \$1.8 million from GI LLC to ACU, and very shortly
5 later on the same day, ACU used those funds to wire \$1.71 million to Now or Never PAC.
6 Correspondence from the morning of the transaction demonstrates that Thomas had knowledge
7 of the planned multi-step arrangement when he wired \$1.8 million from GI LLC to ACU. Prior
8 to executing the transfer, Thomas received an email from ACU's banking representative,
9 forwarded to him by Axiom Strategies consultant Jeff Roe, referencing an "outgoing wire" that
10 ACU was to authorize once the funds arrived. Thomas's knowledge of a planned outgoing wire
11 from ACU, along with his role as treasurer of Now or Never PAC, demonstrates that he knew
12 how ACU would use the funds from GI LLC and that he knowingly assisted in making a
13 contribution in the name of another by wiring those funds from GI LLC to ACU.

14 Thomas's knowledge of an agreement among the Respondents is further supported by
15 correspondence he received from ACU later in the day. Immediately after Thomas authorized
16 the wire from GI LLC to ACU, ACU's executive director Gregg Keller wrote to Thomas and
17 Axiom Strategies consultants to confirm that he would "take action immediately upon receipt."
18 ACU's communications stating that it would take "action" upon receipt of GI LLC's wire
19 transfer provide probable cause to believe that ACU's transfer of funds to Now or Never PAC
20 was contingent upon it receiving funds from GI LLC, and that the parties entered into an
21 agreement by which GI LLC made a contribution to Now or Never PAC in the name of ACU.
22 Though Thomas states that he was unaware of such an explicit agreement among the parties, this
23 claim is unavailing in light of his receipt of emails discussing the multiple steps the Respondents

1 carried out in order for Now or Never PAC to receive a portion of the funds that GI LLC
2 provided to ACU.

3 Thomas played a significant role in the multi-step transaction. He wired the funds from
4 GI LLC to ACU, served as a point of contact among the Respondents regarding the transactions,
5 accepted the funds on behalf of Now or Never PAC, and finally reported ACU as the source of
6 the funds. Accordingly, this Office is prepared to recommend that there is probable cause to
7 believe that Thomas knowingly assisted in the making of a contribution in the name of another
8 via the multi-step transaction that resulted in funds being transferred from GI LLC to ACU to
9 Now or Never PAC.

10 **B. There is Probable Cause to Believe that Thomas Knowingly Accepted and**
11 **Misreported a Contribution in the Name of Another**
12

13 The Act prohibits any person from knowingly accepting a contribution in the name of
14 another.⁴⁶ The Act also requires political committees such as Now or Never PAC to file regular
15 disclosure reports.⁴⁷ Committees, through their treasurers, must disclose itemized breakdowns of
16 receipts, including the name and address of each person who has made any contribution in an
17 aggregate amount or value in excess of \$200 within the calendar year, together with the date and
18 amount of any such contribution.⁴⁸ In addition, if a committee treasurer discovers after receipt of
19 an apparently legitimate contribution that it was made in the name of another, the treasurer must
20 refund or disgorge the contribution within 30 days.⁴⁹

⁴⁶ 52 U.S.C. § 30122

⁴⁷ 52 U.S.C. § 30104(b).

⁴⁸ *Id.* § 30104(b)(3)(A); 11 C.F.R. § 104.3(a)(3)-(4).

⁴⁹ 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).

1 As discussed above, the record provides probable cause to believe that Thomas
2 participated in a multi-step transaction designed to effect a contribution in the name of another.

3 As treasurer of Now or Never PAC, Thomas accepted a contribution in the name of ACU
4 notwithstanding his knowledge that ACU was not the true source of those funds. Thomas later
5 misreported that contribution in Now or Never PAC's 2012 post-general election disclosure
6 report.

7 We are prepared to recommend that the Commission find Thomas personally liable for
8 his role in accepting and misreporting a contribution in the name of another on behalf of Now or
9 Never PAC. The Commission has stated that, "[d]ue to their 'pivotal role,' treasurers may be
10 held personally liable for failing to fulfill their responsibilities under the Act and the
11 Commission's regulations."⁵⁰ Thus, the Commission has determined as a matter of policy that it
12 will proceed against treasurers in their personal capacity:

13 [W]here information indicates that the treasurer knowingly and willfully violated
14 an obligation that the Act or regulations specifically impose on treasurers or
15 where the treasurer recklessly failed to fulfill the duties imposed by law, or where
16 the treasurer has intentionally deprived himself or herself of the operative facts
17 giving rise to the violation.⁵¹

18 Thomas acted both knowingly and, as set forth in more detail in Part III.C below,
19 willfully in violating the Act, and recklessly failed to fulfill the duties imposed on him by law.
20 As treasurer, Thomas had a legal duty to disclose the identity of Now or Never PAC's
21 contributors, and to disgorge any contribution found to be made in the name of another. Given
22 Thomas's dual role in the transaction between GI LLC and ACU and the subsequent transaction
23 from ACU to Now or Never PAC, we are prepared to recommend that the Commission find
24

⁵⁰ Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. at 5 (Jan. 3, 2005).

⁵¹ *Id.* at 3-4.

1 probable cause to believe that Thomas recklessly failed to fulfill his duties as treasurer, and that
2 the Commission find probable cause to believe that Thomas, in his personal capacity, knowingly
3 accepted a contribution in the name of another and misreported that contribution.

4 **C. There is Probable Cause to Believe that Thomas Acted Knowingly and Willfully**
5

6 The Act prescribes additional monetary penalties for violations that are knowing and
7 willful.⁵² A violation of the Act is knowing and willful if the “acts were committed with full
8 knowledge of all the relevant facts and a recognition that the action is prohibited by law.”⁵³ This
9 standard does not require proving knowledge of the specific statute or regulation the respondent
10 allegedly violated.⁵⁴ Instead, it is sufficient to demonstrate that a respondent “acted voluntarily
11 and was aware that his conduct was unlawful.”⁵⁵ This may be shown by circumstantial evidence
12 from which a respondent’s unlawful intent reasonably may be inferred.⁵⁶ For example, a
13 person’s awareness that an action is prohibited may be inferred from “the [person’s] elaborate
14 scheme for disguising . . . political contributions.”⁵⁷

⁵² See 52 U.S.C. §§ 30109(a)(5)(B), 30109(d).

⁵³ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

⁵⁴ *United States v. Danielczyk*, 917 F. Supp. 2d 573 (E.D. Va. 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)).

⁵⁵ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

⁵⁶ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

⁵⁷ *Id.* at 214–15. As the *Hopkins* court noted, “[i]t has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

1 The available evidence demonstrates probable cause to believe that Thomas acted in a
2 knowing and willful manner when he assisted in the making of, accepted, and misreported a
3 contribution in the name of another. First, as treasurer for Now or Never PAC, Thomas was
4 familiar with the Act's requirements for making and accepting contributions. Thomas, an
5 attorney, has served as the treasurer of Now or Never PAC since 2012, when the group filed its
6 Statement of Organization. He is also the treasurer of at least one other federal committee, has
7 received disbursements from multiple federal committees for legal services, and has served as
8 the treasurer of approximately twenty state political committees.⁵⁸ Given this experience, there
9 is probable cause to believe that Thomas had the requisite knowledge that federal campaign
10 finance law required Now or Never PAC to disclose the true source of all contributions, and that
11 it was illegal to make, assist in making, or accept a contribution in the name of another.
12 Although Thomas was aware of the disclosure requirements, he was a key player in executing
13 the multi-step transfer designed to circumvent the Act's disclosure requirements.

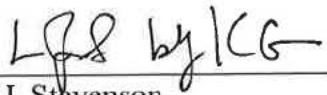
⁵⁸ *See supra*, Part II.A.

IV. CONCLUSION


Based on the foregoing, the Office of the General Counsel is prepared to recommend that there is probable cause to believe that James C. Thomas, III knowingly and willfully violated 52 U.S.C. § 30122 by knowingly assisting in the making of a contribution in the name of another and knowingly accepting a contribution in the name of another, and knowingly and willfully violated 52 U.S.C. § 30104(b)(3)(A) by failing to accurately report that contribution.

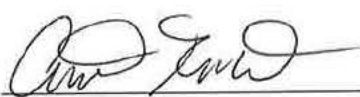
Date

10-4-17


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