



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 21 2017

VIA ELECTRONIC AND OVERNIGHT MAIL

Eliot S. Berke, Esq.
Berke Farah
1200 New Hampshire Ave., NW, Suite 800
Washington, DC 20036

RE: MUR6920
Government Integrity, LLC

Dear Mr. Berke:

On July 13, 2017 the Federal Election Commission found reason to believe that your client, Government Integrity, LLC violated 52 U.S.C. § 30122 by making a contribution in the name of another. 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 Government Integrity knowingly and willfully violated 52 U.S.C. § 30122 by making a contribution in the name of another. 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 'Lisa J. Stevenson', with a large, stylized initial 'L' and a long, sweeping horizontal stroke extending to the right.

Lisa J. Stevenson
Acting General Counsel

Enclosure
General Counsel's Brief

below, based on the record established by its investigation, OGC is prepared to recommend that the Commission find probable cause to believe that GI LLC knowingly and willfully violated 52 U.S.C. § 30122 and 11 C.F.R § 110.4(b)(1)(i) by making a contribution in the name of another.

II. FACTS

A. Background

1. GI LLC

GI LLC is a Delaware limited liability corporation that was established in September 2012.⁴ GI LLC's only known organizational purpose was to support conservative organizations and causes.⁵ Christopher W. Byrd, who died in 2014, served as the "sole manager and officer" of GI LLC in 2012.⁶ Byrd retained Thomas to prepare organizational paperwork, serve as attorney and perform various tasks on behalf of GI LLC.⁷ Thomas states that all tasks he performed for GI LLC were conducted at the request and under the direction of Byrd.⁸

The Incentive Discretionary Trust ("IDT") appears to have formed and financed GI LLC.⁹ Charles Harris, acting as trustee of IDT, appointed Byrd as the "sole nominee" of GI LLC

⁴ GI LLC incorporated on September 10, 2012. *See* Delaware Secretary of State Entity Search (<https://icis.corp.delaware.gov/Ecorp/EntitySearch/NameSearch.aspx>).

⁵ *See* Thomas Interrogatory Answers at 3.

⁶ *Id.* at 1-2.

⁷ *Id.* at 1, 3.

⁸ *Id.* at 1.

⁹ In an August 24, 2017 telephone conversation with OGC, counsel for IDT referred to GI LLC as being "100% owned" by IDT.

in or around September 2012, when the LLC was formed.¹⁰ IDT funded GI LLC, wiring it \$2.5 million only seven weeks after the LLC's formation.¹¹

2. Other Relevant Actors

Now or Never PAC is an independent expenditure-only committee that filed its Statement of Organization with the Commission on February 21, 2012. Thomas, who is both an attorney and an accountant, has been Now or Never PAC's treasurer since its organization in 2012. During the 2012 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 cycle and reported \$714,811 in independent expenditures. Now or Never PAC has been largely inactive since the 2014 cycle. It has not reported 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.¹² Axiom Strategies has "participated in [Now or Never PAC's] operations and financial activities," and Thomas's terms of engagement with Now or Never PAC "expressly authorize" him to carry out the instructions of Axiom Strategies.¹³ Thomas represents that he primarily took direction from Axiom Strategies' founder,

¹⁰ 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).

¹¹ See Thomas Interrogatory Answers at 4.

¹² Axiom Interrogatory Answers at 2 (Sept. 1, 2017).

¹³ Thomas Interrogatory Answers at 7.

1 Jeff Roe. Axiom Strategies also provided GI LLC with recommendations regarding the
2 distribution of its funds.¹⁴

3 American Conservative Union is registered with the IRS as a social welfare organization
4 under section 501(c)(4) of the Internal Revenue Code, and is not registered with the Commission
5 as a political committee. ACU describes itself as the oldest and largest conservative grassroots
6 organization in the United States. It received donations totaling \$8,485,503 in 2012.¹⁵ In 2012,
7 ACU's executive director was Gregg Keller.

8 **B. The October 31, 2012 Transactions**

9 On October 31, 2012, GI LLC transferred \$1.8 million to ACU. On the same day, shortly
10 after receiving those funds, ACU transferred \$1.71 million to Now or Never PAC. Axiom
11 Strategies, who provided fundraising services to Now or Never PAC, acknowledges that it both
12 recommended that GI LLC contribute to ACU and solicited the nearly simultaneous transfer of
13 funds from ACU to Now or Never PAC.¹⁶

¹⁴ *Id.* at 2; *see also* Axiom Interrogatory Answers at 5.

¹⁵ *See* Compl., Ex. C at Part I.

¹⁶ *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.

1 The transactions occurred within an extremely short window over the course of a single
2 day. On the morning of October 31, 2012, GI LLC confirmed receipt of a \$2.5 million wire
3 transfer from IDT.¹⁷ Once GI LLC received the funds from IDT, Thomas emailed Axiom
4 Strategies consultants Jeff Roe and Sarah Hoeller at 11:11 am, stating “[t]he 2.5 million is here. I
5 am about to wire \$1.8 million to American Conservative Union.”¹⁸

6 Earlier that morning, Keller and Roe sent a series of emails confirming an arrangement to
7 transfer funds from GI LLC to ACU, and then from ACU to Now or Never PAC. At 9:41 am,
8 Keller received an email from ACU’s banking representative instructing him that, “[w]hen the
9 funds arrive, we’ll reach out to you immediately for notification,” and requesting “the outgoing
10 wire instructions” to prepare the subsequent transfer for Keller’s signature.¹⁹ Keller forwarded
11 that email to Roe at 9:43 am, who forwarded it on to Hoeller and Thomas at 9:46 am.²⁰

12 At 11:14 am, after confirming the receipt of funds from IDT, and after receiving Keller’s
13 email, Thomas emailed Roe and Hoeller requesting ACU’s wiring address. Roe forwarded that
14 message to Keller, who confirmed the address.²¹ Thomas then emailed a bank representative
15 wiring instructions for the transfer of \$1.8 million from GI LLC to ACU.²² Thomas states that

¹⁷ 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.

¹⁸ ACU Documents at FEC000004-5.

¹⁹ Thomas Documents at JT2017-0001.

²⁰ *Id.*

²¹ ACU Documents at FEC000004-5.

²² Thomas Documents at JT2017-0015.

1 he wired the funds to ACU at the direction of Byrd.²³ After authorizing the transfer, Thomas
2 emailed Keller, Roe, and Hoeller to confirm that the “[m]oney should be on its way shortly.”²⁴

3 Consistent with Keller’s email earlier that morning, shortly after receiving confirmation
4 of the wire transfer from GI LLC to ACU, Keller wrote to Thomas, Roe, and Hoeller to state,
5 “[w]ill take action immediately upon receipt.”²⁵ He followed up with that email minutes later,
6 stating that he’d “need wiring instructions,” presumably to transfer funds from ACU to Now or
7 Never PAC.²⁶ Prior to its receipt of the wire from GI LLC, ACU had a combined total balance
8 of approximately \$538,000 across its bank accounts.

9 Later that afternoon, Roe emailed Thomas and Hoeller to inquire as to the status of the
10 “acu dough,” stating “[w]e need the mo wire out...”²⁷ Roe appears to have forwarded that email
11 to Keller, who was on the email thread when Thomas later replied confirming that Now or Never
12 PAC received the \$1.71 million.²⁸ Keller forwarded Thomas’s confirmation to Louisa Imperiale,
13 then-National Finance Director of ACU, stating, in an apparent reference to the fact that ACU
14 would keep the difference between the \$1.8 million received from GI LLC and the \$1.71 million
15 sent to Now or Never PAC, “FYI. We have the \$90k.”²⁹ Imperiale replied, “Well done!!!!”³⁰

²³ Thomas Interrogatory Answers at 4.

²⁴ ACU Documents at FEC000004.

²⁵ Thomas Documents at JT2017-0011.

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

²⁷ ACU Documents at FEC000008-9. 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 ad 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.*

²⁸ ACU Documents at FEC000008.

²⁹ *Id.*

³⁰ *Id.*

Now or Never PAC reported receiving \$1.71 million from ACU in its 2012 post-general election disclosure report. Thomas, the treasurer of Now or Never PAC, acknowledges that he “assumed that this contribution may have consisted in part of funds ACU had previously received from GI LLC[.]”³¹

ACU’s Director of Operations later characterized the funds sent to Now or Never PAC as a “pass through” in an email asking Keller if ACU had to make its own filing with the Commission in connection with the transaction.³² In May 2014, apparently after an independent auditor reviewed its 2012 finances,³³ ACU filed an Amended 2012 IRS Form 990 that disclosed the \$1.71 contribution to Now or Never PAC as “a political contribution received by the Organization and promptly and directly delivered to a separate political organization.”³⁴ ACU has not affirmatively disputed its auditors’ characterization of the transaction. None of the parties or witnesses involved have offered an explanation for the three-step structure of the transaction.

C. Discovery Request to GI LLC and IDT

Upon learning that GI LLC had transferred funds to ACU, the Commission sought information from GI LLC and its agent, Thomas. Thomas revealed that he took direction solely from Byrd, who is now deceased, and knew of only limited information regarding GI LLC. Counsel for Thomas represented that GI LLC was dormant and that he was unaware of any person who could speak on behalf of GI LLC. Upon learning from Thomas that IDT formed and

³¹ Thomas Interrogatory Answers at 5. 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.*

³² ACU Second Document Submission, November 30, 2012 email from Melissa Bowman to Gregg Keller.

³³ Compl. ¶¶ 15-17, Exs. B (Conlon & Associates Independent Auditor’s Report, Apr. 9, 2014) and C.

³⁴ *Id.*, Ex. C at Schedule O, Schedule C.

1 funded GI LLC, the Commission served IDT through its trustee, Harris, with a Subpoena and
2 Order requesting the production of documents and the answers to interrogatories regarding its
3 role in the transaction, its relationship with GI LLC, and the source of the funds used to make a
4 contribution to Now or Never PAC.³⁵ After the service of this subpoena, Harris, acting as
5 Trustee of IDT, designated counsel for GI LLC. The new counsel for GI LLC represented that
6 GI LLC had been dormant, and had been resurrected by IDT solely to resolve this matter. GI
7 LLC counsel also indicated that they had no information about GI LLC other than what was
8 provided to them by IDT.

9 IDT's response to the Subpoena and Order was due on August 25, 2017. The day before
10 IDT's response was due, IDT's newly retained counsel requested an extension of seventeen days.
11 Because of statute of limitations concerns, OGC was unable to grant the request. Nonetheless,
12 counsel for IDT stated that IDT would not respond to the Subpoena and Order until September
13 11, 2017.³⁶ On September 12, 2017, IDT informed OGC that it "cannot comply" with the
14 Commission's Subpoena and Order seeking information regarding GI LLC.³⁷

15 **III. LEGAL ANALYSIS**

16 The evidence shows that GI LLC knowingly and willfully made a \$1.71 million
17 contribution in the name of another to Now or Never PAC. The undisputed facts demonstrate
18 that GI LLC transferred money to ACU in order to fund a \$1.71 million contribution to Now or
19 Never PAC, and that Now or Never PAC reported those funds as coming from ACU, rather than
20 GI LLC or IDT, who formed GI LLC in 2012 and represents itself as owning GI LLC. The
21 record also provides probable cause to believe that representatives of GI LLC, including Byrd,

³⁵ See Subpoena to Produce Documents and Answer to Submit Written Questions (Aug. 10, 2017).

³⁶ Letter from Mike Dry at 2 (Aug. 31, 2017).

³⁷ Letter from Mike Dry at 2 (Sept. 12, 2017).

Thomas and consultants at Axiom Strategies, knew that Now or Never PAC was required to disclose its contributors, and designed the three-step transfer to conceal that GI LLC or IDT was the source of \$1.71 million contribution.

A. There is Probable Cause to Believe that GI LLC Made a Contribution in the Name of Another

Under the Act, a “contribution” includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office.³⁸ The Act prohibits a person from making a contribution in the name of another.³⁹ Courts have uniformly rejected the assertion that “only the person who actually transmits funds . . . makes the contribution,”⁴⁰ recognizing that “it is implausible that Congress, in seeking to promote transparency, would have understood the relevant contributor to be [an] intermediary who merely transmitted the campaign gift.”⁴¹ Accordingly, the Act and the Commission’s regulations provide that a person who provides funds to another for the purpose of contributing to a committee “makes” the resulting contribution.⁴² The requirement that a contribution be made in the name of its true source promotes Congress’s objective of ensuring the complete and accurate disclosure by candidates and committees of the political contributions they receive.⁴³

³⁸ 52 U.S.C. § 30101(8)(A).

³⁹ *Id.* § 30122.

⁴⁰ *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

⁴¹ *United States v. O'Donnell*, 608 F.3d 546, 554 (9th Cir. 2010); *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.”).

⁴² *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.”).

⁴³ *See, e.g., O'Donnell*, 608 F.3d at 553 (“[T]he congressional purpose behind [section 30122] — to ensure the complete and accurate disclosure of the contributors who finance federal elections — is plain.”).

1 The record establishes probable cause to believe that GI LLC made a \$1.71 million
2 contribution in the name of another. Thomas, acting on behalf of GI LLC while also serving as
3 Now or Never PAC's treasurer, wired \$1.8 million from GI LLC to ACU, and on the same day,
4 ACU wired \$1.71 million to Now or Never PAC. Consultants for Axiom Strategies, who
5 worked for Now or Never PAC, both recommended that GI LLC fund ACU and solicited a
6 contribution from ACU to Now or Never PAC. Without the transfer from GI LLC, ACU would
7 have lacked the funds needed to make a \$1.71 million federal contribution.

8 Contemporaneous emails documenting the transaction suggest the presence of an
9 agreement among the parties to effect a contribution in the name of another. Prior to Keller
10 transferring the funds to Now or Never PAC, he wrote to Thomas, who acted on behalf of both
11 GI LLC and Now or Never PAC, and Axiom Strategies political consultants to provide the
12 details of the conduit arrangement and confirm that ACU would "take action immediately upon
13 receipt" of the wire from GI LLC. ACU's communications stating that it would take "action"
14 upon receipt of GI LLC's wire transfer provides a strong inference that the parties entered into an
15 agreement by which GI LLC made a contribution to Now or Never PAC in the name of ACU.
16 Thomas's claim that he was unaware of an explicit agreement among the parties is therefore
17 unavailing.

18 The presence of an agreement among the parties is consistent with ACU's later
19 characterization of the contribution as a "pass through" when its Director of Operations made an
20 inquiry as to whether ACU had an obligation to make its own filing with the Commission. Such
21 an agreement is further confirmed by ACU's amended tax filing in which it characterized the

1 \$1.71 contribution to Now or Never PAC as “a political contribution received by the
2 Organization and promptly and directly delivered to a separate political organization.”⁴⁴

3 Additionally, ACU's receipt of \$90,000 from GI LLC supports an inference that the
4 difference between the \$1.8 million transfer from GI LLC and the \$1.71 million sent to Now or
5 Never PAC was the fee GI LLC paid for using ACU's name to make a contribution in the name
6 of another. ACU's executive director, upon learning that Now or Never PAC received the \$1.71
7 million it transferred, wrote to ACU's finance director to confirm “[w]e have the \$90k.” ACU's
8 receipt of \$90,000 supports an inference that the parties agreed to pay ACU in exchange for
9 using ACU's name to make a contribution to Now or Never PAC.

10 Finally, neither GI LLC nor IDT have provided an alternate explanation for the structure
11 of the transaction. GI LLC claims that it does not have access to information regarding the
12 subject matter of the investigation, and is dependent on IDT for information. IDT, who has
13 made no such claim, and has represented itself as the owner of GI LLC, has refused to comply
14 with the Commission's Subpoena and Order to produce documents and interrogatory answers to
15 shed further light on this matter. The Commission is therefore entitled to draw an adverse
16 inference regarding the information IDT has refused to disclose.⁴⁵ It appears that because IDT
17 formed, financed, and controlled GI LLC, it has exclusive control over certain information
18 regarding the entity. Due to IDT's relationship with GI LLC, the Commission may draw an
19 adverse inference for its failure to produce information relevant to determining GI LLC's

⁴⁴ Compl., Ex. C at Schedule O, Schedule C.

⁴⁵ 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).

liability in this matter. The Commission's subpoena requested that IDT provide information regarding, *inter alia*, whether IDT knew how the funds it transferred to GI LLC would be used; whether IDT had any communications with GI LLC, ACU, Now or Never PAC, or Axiom Strategies regarding its transfer of funds to GI LLC; IDT's purpose for transferring the funds to GI LLC; and the source of its \$2.5 million transfer to GI LLC. IDT's refusal to comply with the Commission's Subpoena and Order further bolsters the information in the record indicating that the parties intended to hide the source of the funds, and that GI LLC made a contribution in the name of ACU so that Now or Never PAC would report ACU as the contributor.

B. There is Probable Cause to Believe that GI LLC Acted Knowingly and Willfully

The Act prescribes additional monetary penalties for violations that are knowing and willful.⁴⁶ A violation of the Act is knowing and willful if the "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law."⁴⁷ This standard does not require proving knowledge of the specific statute or regulation the respondent allegedly violated.⁴⁸ Instead, it is sufficient to demonstrate that a respondent "acted voluntarily and was aware that his conduct was unlawful."⁴⁹ This may be shown by circumstantial evidence from which the respondents' unlawful intent reasonably may be inferred.⁵⁰ For example, a

⁴⁶ See 52 U.S.C. §§ 30109(a)(5)(B), 30109(d).

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

⁴⁸ *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)).

⁴⁹ *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)).

⁵⁰ *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.

1 person's awareness that an action is prohibited may be inferred from "the [person's] elaborate
2 scheme for disguising . . . political contributions."⁵¹

3 The available evidence demonstrates that GI LLC attempted to conceal that the funds it
4 contributed to Now or Never PAC did not originate with ACU. Thomas, who acted as an agent
5 of GI LLC,⁵² and Axiom Strategies consultants, who provided recommendations to GI LLC and
6 also may have acted as GI LLC's agents, played central roles in arranging a three-step transfer
7 designed to prevent GI LLC or IDT from being revealed as the source of the funds received by
8 Now or Never PAC. The structure of the three-step transfer through ACU suggests the parties
9 intended to circumvent the disclosure of GI LLC or IDT. Notably, neither GI LLC, Thomas, nor
10 IDT has addressed the purpose for the transaction being structured as it was, despite requests
11 from OGC to provide an alternative explanation.

12 Because Thomas, Byrd, and Axiom Strategies consultants were sophisticated and
13 experienced actors in political fundraising, it is reasonable to presume that they were aware that
14 the Act requires Now or Never PAC to disclose the true sources of its contributions. Thomas, an
15 attorney, has served as the treasurer of Now or Never PAC since 2012, when the group filed its
16 Statement of Organization. He is also the treasurer of at least one other federal committee,
17 Courageous Conservatives PAC,⁵³ has received disbursements from multiple federal committees

⁵¹ *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)).

⁵² The Commission has defined "agent" for purposes of implementing the Bipartisan Campaign Reform Act of 2002 as "any person who has actual authority, either express or implied." *See* 11 C.F.R. § 109.3. As stated by Thomas, he had express authority to effect the transfer of funds from GI LLC to ACU.

⁵³ *See* Statement of Organization, Courageous Conservatives PAC (Sept. 16, 2015).

1 for legal services,⁵⁴ and has served as the treasurer of approximately twenty Missouri political
2 committees.⁵⁵ Byrd was also an attorney, and previously ran for state office in Missouri. Axiom
3 Strategies consultants Jeff Roe and Sarah Hoeller have been active in federal campaigns since
4 Roe founded Axiom in 2005.⁵⁶ Given this experience, it is likely Thomas, Byrd, Roe, and
5 Hoeller all had knowledge that federal campaign finance law required Now or Never PAC to
6 disclose the true source of all contributions, and that it was illegal to make a contribution in the
7 name of another. This knowledge is attributable to GI LLC, and the Commission has previously
8 afforded weight to a respondent's knowledge of campaign finance law in finding that a
9 respondent knowingly and willfully violated 52 U.S.C. § 30122. Additionally, the Commission
10 is entitled to draw an adverse inference regarding the information IDT has refused to disclose.⁵⁷

11 The record establishes probable cause to believe that GI LLC, through the actions of
12 Thomas, Byrd, Roe, and Hoeller, attempted to conceal the role that it and IDT played in
13 providing the funds that ACU passed through to Now or Never PAC.

⁵⁴ 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 (April 14, 2012).

⁵⁵ See Missouri Ethics Commission Treasurer Search, *available at* http://mec.mo.gov/MEC/Campaign_Finance/CF11_SearchComm.aspx (last visited August 23, 2017).

⁵⁶ See <https://www.axiomstrategies.com/about/> (last visited Aug. 22, 2017).

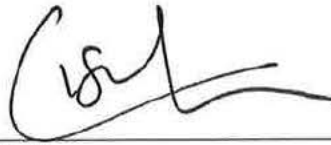
⁵⁷ See *supra*, note 45.

IV. CONCLUSION

Based on the foregoing, the Office of the General Counsel is prepared to recommend that there is probable cause to believe that Government Integrity, LLC knowingly and willfully violated 52 U.S.C. § 30122 and 11 C.F.R. § 110.4(b)(1)(i) by making a contribution in the name of another.

9/21/2017

Date



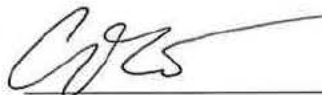
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