



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**COVER LETTER TO THE STATEMENT
OF COMMISSIONER ELLEN L. WEINTRAUB
IN MUR 6920 (AMERICAN CONSERVATIVE UNION)**

DECEMBER 19, 2017

Due to pending litigation, I must take the unprecedented step of releasing the attached statement with the identities of certain persons and entities redacted. As can be seen from my statement and the third General Counsel's Report, these were not incidental witnesses swept up in the agency's probe, but rather key players in the scheme the Commission unanimously found to have violated the law against making contributions in the name of another.

After engineering an intricate plot to defeat the public's interest in knowing who was actually behind a \$1.7 million political contribution, the plaintiffs are now taking the extraordinary step of suing the Commission to force us to continue to hide their identities.¹ I am looking forward to the expeditious resolution of this litigation with a ruling in the FEC's favor that will allow me to reissue my statement unredacted.

The public has the right to know as much as this agency was able to determine about who was trying to influence the election with this huge contribution. Likely the beneficiaries of their largesse already do.

¹ I suspect this will prove unwise. See "Streisand effect," https://en.wikipedia.org/wiki/Streisand_effect



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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

American Conservative Union;)
Government Integrity LLC; Now or)
Never PAC and James C. Thomas, III in)
his official capacity as treasurer; James C.)
Thomas III)

MUR 6920

**STATEMENT OF REASONS
OF COMMISSIONER ELLEN L. WEINTRAUB**

This important case is an egregious example of someone using a web of organizations to hide the true source of a \$1.7 million contribution to a super PAC – and getting away with it. The complaint that Citizens for Responsibility and Ethics in Washington (“CREW”) filed with the Commission in this matter in February 2015 alleged serious violations of the laws against making, accepting, or assisting with a federal campaign contribution in the name of another.¹ Amended tax filings had revealed that \$1.71 million had been routed through the American Conservative Union (“ACU”) to Now or Never PAC, but the true source of the money was unknown. Almost three years later, CREW, the Commission, and the American public are still in the dark.

The Commission unanimously confirmed that the prohibitions against contributions in the name of another apply to super PACs, made rare knowing and willful findings, and negotiated a \$350,000 penalty. Nonetheless, whoever concocted this elaborate scheme – in which money was funneled through at least four organizations (that we know of) in order to influence federal elections – succeeded in hiding their identity from the American public. A penalty has been extracted from some of the culpable entities here, but we still have no idea who was behind the illegal behavior.

In *Citizens United*, the Supreme Court recognized the important public interests served by transparency in campaign finance, in holding “elected officials accountable for their . . .

¹ 52 U.S.C. § 30122; 11 C.F.R. § 110.4(b).

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supporters,” in revealing “whether elected officials are “‘in the pocket’ of so-called moneyed interests,” and in “enabl[ing] the electorate to make informed decisions.”² Unfortunately, as has been demonstrated in this matter, the courts have been naïve to allow corporations to fund super PACs without taking into account the ease with which they can be used to circumvent disclosure.

While the penalty is not insignificant, it fails to reflect the magnitude of the violation and the lengths to which respondents went to conceal the true source of the money and is an inadequate deterrent to future wrongdoing. Penalties that are not commensurate with the amount in violation risk being written off as a “cost of doing business.” For someone who is willing and able to pour millions of dollars into political activity, an additional \$350,000 is a rounding error.

Here’s what we know happened. [REDACTED] (“[REDACTED]”), a trust created and owned by unknown parties, through its trustee, [REDACTED], [REDACTED] the ironically named Government Integrity LLC (“GI”) in September 2012, [REDACTED].³ On or about Oct. 31, 2012, [REDACTED] transferred \$2.5 million to GI. GI, through its lawyer, James Thomas, immediately transferred \$1.8 million to ACU (a 501(c)(4) tax-exempt organization). ACU immediately turned around and sent \$1.71 million to Now or Never PAC, whose treasurer was none other than GI’s lawyer, James Thomas.

ACU would not have had the money to make the contribution to Now or Never PAC without the transfer from GI.⁴ ACU pocketed \$90,000 for funneling the money and allowing its name to be used as the “donor” to the PAC.⁵ Thomas, as the PAC’s treasurer, reported the \$1.71 million contribution as coming from ACU, although he plainly knew that ACU was not the ultimate source of the funds because *he himself had transferred the money from GI to ACU*.

The Commission was able to discover this much, but despite authorizing subpoenas, we never learned the most important fact: the ultimate source of the almost two million dollars given to the PAC – the identity of the person who wrote the *first* check.

Why? With everyone well aware of the clock ticking down to the expiration of the statute of limitations, subpoenaed witnesses refused to cooperate. A motion to authorize our Office of General Counsel to file suit to enforce our subpoenas (and find out the true source of the funds) failed 2-3, with my Republican colleagues all voting No.⁶

² 558 U.S. 301, 370 (2010).

³ Third General Counsel’s Report, dated September 15, 2017, at 4.

⁴ *Id.* at n.8.

⁵ On or very shortly before October 31, 2012, [REDACTED] wired \$2.5 million to GI. On October 31, 2012, Thomas sent an email to Now or Never PAC consultants stating, “The 2.5 million is here. I am about to wire \$1.8 million to American Conservative Union.” *Id.* Later that same day, immediately after ACU’s receipt of \$1.8 million from GI, ACU wired \$1.71 million to Now or Never PAC, keeping \$90,000 (exactly 5 percent). *Id.* After Thomas confirmed that Now or Never PAC received ACU’s transfer, ACU’s executive director wrote to ACU’s then-National Finance Director: “FYI. We have the 90k.” She replied, “Well done!!!!” MUR 6920 Global Conciliation agreement at 4.

⁶ Certification in MUR 6920 (ACU) dated Sept. 20, 2017.

How did we find ourselves running up against the statute of limitations? The information underlying the complaint did not surface until years after the events took place.⁷ Then, after the Office of General Counsel forwarded its first set of recommendations to the Commission, the Commission failed to act for a full year. The recommendations were not even placed on a meeting agenda for almost a year.⁸ By the time my colleagues were willing to move forward on this matter earlier this year, we were just about out of time. Ultimately, they directed staff to pursue a fine that was a fraction of the amount in violation. The Commission's lawyers were able to get the respondents to the negotiating table, a small miracle in itself, but they were unable to unearth the full truth of the matter. They traced the money back from Now or Never PAC to ACU to GI to [REDACTED] (the latter two entities having been unknown to the complainant). [REDACTED] was identified late as a link in the chain, and while our General Counsel recommended finding reason to believe [REDACTED] had violated the law and seeking further information from it, a motion to do so again failed on a 2-3 party line vote.⁹ Who provided the money to [REDACTED] and how far back did this chain extend? Frustratingly, we still do not know.

This case is just the latest illustration of a longstanding concern of mine: Effective enforcement of the law is undermined by pervasive delays. On May 21, 2015, I introduced a proposal to impose some discipline on the process and force the Commission to vote on our counsel's enforcement recommendations on a timely basis.¹⁰ Despite protracted negotiations and attempts to reach agreement at four separate meetings,¹¹ I could not get a commitment from a majority of the Commission to abide by any firm deadlines.

In this case, Commission neglect and respondents' deliberate concealment combined to defeat the public interest. Given their votes not to enforce the subpoenas or make findings against [REDACTED], it is not clear whether my colleagues would have been willing to investigate more vigorously even if we hadn't been up against the statute of limitations. But this much is clear: This case languished on commissioners' desks, and we failed in our mission to follow the money and trace it back to its ultimate source. The public had a right to know the true source of \$1.7

⁷ Third General Counsel's Report at n.29.

⁸ The Commission received the first General Counsel's Report on Jan. 20, 2016, and did not take its first vote until Dec. 6, 2016. That vote split, accomplishing nothing, and the Commission did not find reason to believe that a violation of the law had occurred until Jan. 24, 2017, on a complaint where the SOL would begin to expire on Oct. 31, 2017. Certifications in MUR 6920 (ACU), dated Dec. 6, 2016 and Jan. 24, 2017.

⁹ Certification in MUR 6920 (ACU) dated Sept. 20, 2017.

¹⁰ Memorandum dated May 18, 2015 from Commissioner Ellen L. Weintraub to the Commission, Proposed Directive 74 on the Timely Resolution of Enforcement Matters, Agenda Document No. 15-25-B, *found at* https://www.fec.gov/resources/updates/agendas/2015/mtgdoc_15-25-b.pdf

¹¹ See FEC open-meeting agendas of May 21, 2015 (*found at* <https://www.fec.gov/updates/may-21-2015-open-meeting/>); June 18, 2015 (*found at* <https://www.fec.gov/updates/june-18-2015-open-meeting/>); July 16, 2015 (*found at* <https://www.fec.gov/updates/july-16-2015-open-meeting/>); and Sept. 17, 2015 (*found at* <https://www.fec.gov/updates/september-17-2015-open-meeting/>).

