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February 24, 2014

Mr. Thomas Hintermister
Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Mr. Hintermister:

On behalf of the Democratic Party of Illinois and its treasurer (collectively, "DPIL"), I write to respond to the draft final audit and the Office of General Counsel's memorandum regarding the DPIL's 2010 activities. The DPIL seeks a hearing on Finding 3 of the draft final audit report, pursuant to the Commission's Procedural Rules for Audit Hearings, 74 Fed. Reg. 33,140 (2009).

INTRODUCTION

The DPIL has cooperated fully with the Audit Division ever since it received notice of this audit in December 2011. The draft final audit report correctly notes the DPIL's compliance with each of the interim audit report's recommendations. And the DPIL complied as part of an overall effort to review and improve its compliance procedures, which it remains committed to do.

The sole remaining issue in dispute—Finding 3—involves \$75,800 among the DPIL's \$4,284,010 in federal receipts. The Audit Division contends that these funds were ineligible for deposit in the federal account, because they were the proceeds of joint fundraising under 11 C.F.R. § 102.17 (2012), because they were raised through events for which the costs were not allocated under 11 C.F.R. § 106.7(d), and because the donors did not receive the notices required under 11 C.F.R. § 102.5(a)(2).

Solely to avoid further dispute, the DPIL transferred these funds to its nonfederal account. The amount was insubstantial compared with the DPIL's total federal activity, and the DPIL wanted generally to comply the auditors' recommendations. But because Finding 3 still asserts potential violations by the DPIL, we must submit this response and seek a hearing.

BACKGROUND

The draft final audit report does not say specifically how Finding 3 arose. As the DPIL explained in its response to the interim audit report, the auditors reviewed deposit batches during fieldwork. In some cases, the batch deposit slip bore a notation with the name of a fundraising event. In other cases, the batch included checks that were accompanied by materials referring to a particular event, like an invitation or a donor card.

The auditors appear to have assumed that all the checks in each batch were raised through the event identified in that batch. At the exit conference, the auditors asked about ten nonfederal fundraising events. They contended that these events raised \$89,918 in federal funds and were not disclosed on Schedule H2 for allocation. In response, the DPIL noted that: (1) each of the identified events was a nonfederal fundraising event; (2) the nonfederal campaign of the DPIL's Chairman sponsored four of the events for its own benefit, and these events elicited a de minimis number of unsolicited checks for the DPIL; and (3) the DPIL sometimes batched checks received from events together with other checks received around the same time.

The interim audit report reduced the disputed amount to \$75,800. As to the four events for the nonfederal campaign of the DPIL's Chairman, "it appears that these events may have been solely for the benefit of the non-federal campaign account" and there was no documentation "to demonstrate that DPIL solicited funds from or participated in these events." Still, it "concluded that none of the funds that DPIL received as a result of these four events was permitted to be deposited into DPIL's federal account." (Interim Audit Report at 10.) As to the six other events, the interim audit report acknowledged that there was not "sufficient information to be able to determine into which category these events fall." (Interim Audit Report at 11.) Nonetheless, the interim audit report asserted that the DPIL failed to follow the joint fundraising rules, failed to include required solicitation language for federal contributions, and failed to allocate the fundraising costs, and was required to transfer the disputed amount to the nonfederal account.

Upon receiving the interim audit report, the DPIL requested and received a list of the checks the auditors identified as disputed. (See Exhibit B.) A review of the checks confirmed that the interim audit report had at least overstated the amount in dispute. For example, the auditors identified \$23,050 in federal contributions associated with a September 28, 2010 "Janssen event." At least \$19,500 of these contributions showed no indicia of association with the event, were solicited by an individual not associated with the event, and were made well before the event occurred. Nonetheless, the draft final audit report presents Finding 3 in the same amount and substantially the same language.

LEGAL DISCUSSION

There is no basis to contend that the DPIL violated the joint fundraising rules, allocation rules or notice requirements. Section 102.17 does not define "joint fundraising." When written in 1983, the regulation codified a series of advisory opinions that prescribed the conditions by which

multiple committees could actively seek contributions together for their respective activities. *See* Transfer of Funds; Collecting Agents; Joint Fundraising, 48 Fed. Reg. 26,296, 26,298 (1983). Each opinion involved an initiative by which multiple committees would solicit funds together, split the proceeds, and divide the costs. *See* Advisory Opinion 1977-08 (Sasser); Advisory Opinion 1977-14 (Bayh, Harris and Shriver); Advisory Opinion 1977-23 (Steers); Advisory Opinion 1977-61 (Colorado Democratic Party); Advisory Opinion 1979-06 (Shasteen); Advisory Opinion 1979-12 (Burlison); Advisory Opinion 1979-35 (DSCC); Advisory Opinion 1979-75 (Associated Builders and Contractors PAC).

Section 102.17 does not create a refund requirement that is triggered every time a donor brings a lawful check to one committee's event that is payable to another committee. Rather, it requires a series of complex procedures when multiple committees coordinate the allocation of receipts and disbursements between them through a specific event or initiative, as the committees in the original advisory opinions sought to do. *See, e.g.*, Factual and Legal Analysis, MUR 5780, at 5 (Republican Federal Committee of Pennsylvania) (involving events held at the same place and the same time, with the same guest speaker, yet ostensibly branded separately). Even in clear cases, the Commission has shown restraint in enforcing these procedures. *See, e.g.*, Factual and Legal Analysis, MUR 6654 (exercising discretion and taking no action against two Connecticut congressional campaigns, when they each raised approximately \$11,000 through a joint event); First General Counsel's Report, MUR 6039 (exercising discretion in the case of an invitation to an event benefiting three Florida committees).

There is no basis to find that the joint fundraising rules were triggered by any of the events at issue here. For the four events involving the DPIL Chairman's nonfederal campaign, the draft final audit report acknowledges that "it appears that these events may have been solely for the benefit of the non-federal campaign account ..." It presents no coordination between the committees regarding the splitting of proceeds. Instead, the draft report posits a requirement contained nowhere in Commission regulations: that a party leader, whenever he receives a check for the party while raising money for his own campaign, must send the check back if the party and his campaign have not designated a joint fundraising representative, agreed on an allocation formula, signed a joint fundraising agreement, and included special notices on all of their fundraising materials. Adopting Finding 3 in its current form would take the joint fundraising rules where they have never gone before.

Nor is there any basis to find that the DPIL violated the allocation rules or notice requirements. The draft final audit report acknowledges that there is insufficient information to categorize the events identified in fieldwork. A close review of the records shows that at least some of the checks have nothing to do with the identified events, other than that they were batched and deposited with event checks. The draft final audit report shows no amount owed by the nonfederal account to the federal account, which means that the DPIL on the whole paid appropriately for its federal and nonfederal activities. And there is no evidence that any donor was misled about the treatment of his or her contribution, as 11 C.F.R. §102.5(a)(2) was meant to guard against. *See* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money,

67 Fed. Reg. 49, 064, 49,073 (2002). *See also* Conciliation Agreement, MUR 4961 (DNC Services Corporation) (involving splitting of nonfederal contributions when donors were unaware).

We appreciate the Commission's attention to this request, and respectfully request that Finding 3 be rejected.

Very truly yours,

A handwritten signature in black ink, appearing to read "B. Svoboda", with a stylized flourish at the end.

Brian G. Svoboda
Counsel to the Democratic Party of Illinois