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November 12, 2002

**BY HAND DELIVERY**

Lawrence Norton, General Counsel  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
6<sup>th</sup> Floor  
Washington, DC 20463

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COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2002 NOV 13 A 11: 14

*Re: MUR 5312, Gore/Lieberman, Inc. and  
Jose Villarreal, as treasurer*

Dear Mr. Norton:

This is the response of our clients, Gore/Lieberman, Inc. (the "Committee") and Jose Villarreal, as treasurer, to the complaint filed in the above-captioned matter under review ("MUR" 5312). For the reasons stated below, the Committee respectfully requests that the Commission determine that there is no reason to believe that the Committee, or Jose Villarreal, as treasurer, violated any provision of the Act or of the Commission's regulations and close this matter as it pertains to them.

**1. The complaint makes no allegation against the Committee.**

The complaint itself makes no allegations against the Committee. The basis for the complaint is, in summary, that the Washtenaw County Democratic Party (the "Washtenaw Party"), a local party committee in the state of Michigan, allegedly made expenditures in excess of \$1,000 during calendar year 2000 and therefore, should have registered with the Federal Election Commission as a political committee.

Attached to the complaint are what purport to be pages from reports filed by the Washtenaw Party with the state of Michigan, pursuant to state campaign finance laws. Those pages list what appear to be two disbursements (approximately \$700) for campaign materials relating to the Gore/Lieberman presidential ticket. These materials were purchased from vendors in Michigan.

To date, some two years after these transactions, the Committee can locate no records or information pertaining to or indicating any involvement with these items (and the complainant does not allege any such involvement or other consequences to the Committee). Instead, these appear to be perfectly legal transactions involving the procurement of grass roots campaign materials, as is exempted from the definition of "contribution" and more fully explained below.

**2. Grass roots activities by local party committees, such as the dissemination of campaign materials and get-out-the-vote activities may be exempted from the definition of "contribution".**

(B) It has been a long-standing principle of election law that local party committees may, at their own expense, produce and/or distribute a variety of campaign materials in support of party candidates, without any contribution to those candidates occurring. Specifically, as provided for in the statute and the Commission's regulations, the term "contribution" does not include the "payment by a State or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party . . .". 2 U.S.C. §431(8)(A)(x), 11 C.F.R. §100.7(b)(15). Provided certain conditions are met, there is no limitation on the amount of funds which can be spent on such activities. See FEC Advisory Opinions ("AO") 1980-87, 1980-110.

In addition, the term contribution does not include the "payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President . . .". 2 U.S.C. §431(8)(A)(xii), 11 C.F.R. §100.7(b)(17). As with the "volunteer exception", so long as certain conditions are met, there is no limitation as to the amount of funds which can be spent on such activities. See AO 1980-87, 1980-110. Nor do the costs of such activities cause the party committee to become a "political committee" under the Act, if those costs do not exceed the aggregate amount of \$5,000 in the calendar year. 2 U.S.C. §431(4)(C), 11 C.F.R. §100.5(c), AO 1980-87.

Thus, the Commission has long recognized the important and perfectly legal function that grass roots activities by local party committees play in campaigns for Federal offices. Indeed, the Commission's Campaign Guide for Political Party Committees – cited frequently by complainant – states that "State and local party committees may support the party's Presidential ticket through the exempt party activities . . .". See Campaign Guide for Political Party Committees, p. 18.

These activities include both the procurement and dissemination of traditional campaign materials, such as buttons, bumper stickers and signs, as well as local efforts to mobilize and turn out registered voters in the communities where the local committees are organized. Indeed, as the Commission has also recognized, these exemptions are meant to encourage such activities – which are the very heart of the electoral process – rather than to discourage them.

Moreover, the exemptions free the presidential campaigns themselves from responsibility for policing grass roots activities, as long as they are conducted at a minimal level. The Commission has never required a presidential campaign to monitor and stop the legitimate exercise of grass roots activities, i.e., the dissemination of campaign materials, by local party committees when it occurs at this minimal level. To do so would require the campaigns to devote a tremendous amount of resources to rooting out the exercise of free speech – most of which they are typically unaware – and then having to quell it. Instead, the Commission has permitted campaigns and local party committees to rely on the application of the exemptions discussed above to avoid the unwieldy – most likely unconstitutional – result whereby any dissemination of campaign material constitutes a contribution to the candidate supported.

**3. Campaign materials on behalf of the 2000 ticket were available to be produced and purchased on the commercial marketplace.**

Campaign materials on behalf of the 2000 ticket, including buttons, bumper stickers and signs, were available to the public – including to local party committees – in a number of ways. There were a number of vendors, some authorized by the Committee and others not, who would print these materials and sell them, in bulk, to any member of the public who desired to buy them. In fact, the Committee itself would have to make bulk purchases of campaign materials for its own use from outside vendors, and in that respect, what the Washtenaw Party did is no different.

As is clear from the Michigan campaign finance reports attached to the complaint, the Washtenaw Party made two purchases of campaign materials from three different vendors in Michigan.<sup>1</sup> The vendors are listed thereon. It appears from the face of the reports that commercial production prices were paid for this material, and all monies went to the vendors, as they would in any commercial transaction.

The purchase of this material was for use by the Washtenaw Party. There is nothing to indicate, and the complainant does not assert that the Committee made any use of these materials. Since the Committee did not use these materials, but, instead, the Washtenaw Party did, these transactions fall squarely within the exemptions discussed above. As such, no in-kind contribution to the Committee occurred.

**4. The Committee had no involvement in the transactions in question and committed no violation of the Act or of the Commission's regulations.**

At this date, some two years after the transactions complained of, the Committee has no specific recollection or knowledge of these particular transactions. The complainant does not assert that the Committee had any role with respect to these transactions. These

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<sup>1</sup> The complaint also describes perfectly legal expenditures made for volunteer activities, e.g., literature drops. The fact that these allegedly "benefited" federal candidates is of no relevance, given the application of the volunteer exemption.

were simply vendors who printed and produced items such as pins, bumper stickers and signs in ordinary commercial transactions. As far as the Committee knows at this late date, these materials were used in connection with legitimate local volunteer and/or get-out-the-vote activities.

The complaint also references an expenditure made for "campaign office rent" for the benefit of the "Entire Democratic Ticket". The fact that the Washtenaw Party maintained an office is perfectly appropriate, and presumably all of its work – as a local party committee – was for the benefit for all Democratic candidates. It should be noted for purposes of this response, the Committee maintained its own separate office in the state of Michigan from which its activities were conducted. The Committee paid rent on this space and duly disclosed such payments on its reports to the Commission.

None of these facts give rise to an in-kind contribution to the Committee. Because these were all exempt federal activities and not in-kind contributions, the Committee had no reporting obligations in connection therewith. Accordingly, none of these facts give rise to a violation of the Act or of the Commission's regulations by the Committee.<sup>2</sup>

The complainant has taken a transaction that is, on the plain record of the publicly filed campaign finance reports, perfectly legal, and some two years after the election, filed a frivolous complaint that has no merit or basis in fact. There is nothing to implicate the Committee in any wrongdoing. This matter should be swiftly disposed of by the Commission with a determination that there is no reason to believe that the Committee committed any violation of the Act or of the Commission's regulations.

Respectfully submitted,

  
Eric F. Kleinfeld

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<sup>2</sup> The fact that the Washtenaw Party reported these transactions -- possibly mistakenly -- pursuant to state law has no relevance to the analysis of whether the Committee in any way committed a violations of the Act or of the Commission's regulations (and if found by the Commission to be in some way relevant, is certainly not dispositive of any legal conclusion).