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December 23, 2002

Mr Brant S Levine
Office of the General Counsel
Federal Election Commission
999 E Street, N W
Washington, D C 20463

Re: MUR 5031

Dear Mr. Levine.

On behalf of the 17th District Victory Fund (the "Victory Fund") and Catherine Bruner as Treasurer, we submit the following response to the Federal Election Commission's ("FEC"'s or "Commission"'s) reason to believe dated September 17, 2002 (the "Complaint")

A. Allegations of Affiliation

The entire complaint against the Victory Fund is build around a false factual assumption – that the Victory Fund was a participant in a State Party-conducted coordinated campaign. The Complaint alleges that the Victory Fund is affiliated with the Democratic Party of Illinois (the "State Party") and the Rock Island County Democratic Central Committee ("Rock Island"), and that as a result of this relationship, the Victory Fund violated the Federal Election Campaign Act ("FECA") by receiving excessive contributions. This allegation cannot be supported. The Victory Fund is not affiliated with the State Party – it has virtually nothing to do with the State Party. And its relationship with Rock Island was not one of common

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Perkins Coie LLP (Perkins Coie LLC in Illinois)

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control, but was one of distinct local party entities operating in the same geographic area

The Victory Fund is a local party committee. It is responsible for the day-to-day activities of the Democratic Party in the 17th Congressional District region of Illinois. It has, for many years, conducted coordinated campaign efforts for Democratic candidates in this region – those efforts have consisted primarily of assisting in educating the public about Democratic Party issues and getting people out to vote on election day. The Committee is registered with, and files periodic reports with, the Commission. It is also registered with, and files periodic reports with, the State of Illinois.

1. Affiliation Under 11 C.F.R. § 110.3(b)(3)

The Victory Fund is not affiliated with either the State Party or Rock Island under 11 C.F.R. § 110.3(b)(3). First, 11 C.F.R. § 110.3(b)(3) can not support an allegation of affiliation between Rock Island and the Victory Fund because this regulation solely relates to issues of affiliation between a state party and subordinate committees established by that state party. This regulation does not create a presumption of affiliation between two local committees that are not established, financed, maintained or controlled by a state party. Here, the Victory Fund, and to our knowledge Rock Island, were unaffiliated with and acted independently of the State Party, thus Section 110.3(b)(3) is not applicable.

Second, with respect to the relationship between the Victory Fund and the State Party, the facts rebut the presumption created by 11 C.F.R. § 110.3(b)(3). As cited in the Complaint, a local party committee is presumed to be affiliated with a state party committee, but that presumption can be rebutted. 11 C.F.R. § 110.3(b)(3), Advisory Opinion 1978-9. The presumption is rebutted if the local committee can demonstrate that

- (1) the political committee of the party unit in question has not received funds from any other political committees

established, financed, maintained or controlled by any party unit,
and

(ii) the political committee of the party unit in question
does not make its contributions in cooperation, consultation, or
concert with, or at the request or suggestion of any other party
unit or political committee established, financed, maintained or
controlled by another party unit.

11 C.F.R. § 110.3(b)

The Victory Fund meets both of these criteria. It did not receive any funds from the State Party (or any unit of the State Party) and it did not coordinate its contributions with the State Party (or any unit of the State Party).

The Complaint attempts to establish affiliation between the State Party and the Victory Fund with information that is not relevant to the determination. With respect to the State Party, the Complaint states, "their joint participation in any 'Coordinated Campaign' party program, with its built in national and state party planning and approval, would provide support for a finding of affiliation." Complaint at 12-13 (emphasis added). While we do not necessarily agree that this is a correct statement of the law,¹ as a factual matter the Victory Fund did not coordinate its activities with

¹ The regulations state that the presumption of affiliation is rebutted if the local committee can demonstrate that it did not coordinate contributions. 11 C.F.R. § 110.3(b)(3) (the presumption may be rebutted if the political committee "does not make its contributions in cooperation, consultation, or concert with, or at the request or suggestion of any other party" (emphasis added)). The regulations do not provide that any coordination of any expenditure results in a finding of affiliation; the relevant examination is of coordination of contributions only. Accordingly, a showing of general coordination of generic party activities would not necessarily support a finding of affiliation. Moreover, a showing of coordination of generic party activity would not support a finding of affiliation under 11 C.F.R. § 100.5(g)(2), which identifies ten factors that the Commission should consider to determine whether two committees were established, financed, maintained or controlled by the same person or group. Coordination of generic party activity is not a factor in 11 C.F.R. § 100.5(g)(2). There are no other

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the State Party and did not participate in any "coordinated campaign" run by the State Party. No state or national party entity planned, approved, or directed the Victory Fund's activities. Indeed, the Victory Fund was very careful to avoid any coordination of its activities with the State Party. Accordingly, under the circumstances, 11 C F R. § 110.3(b)(3) does not support a presumption of affiliation between Victory Fund and either Rock Island or the State Party.

2. Affiliation Under 11 C.F.R. § 100.5(g)(2)

The Complaint also alleges that the State Party and Rock Island were affiliated with the Victory Fund under 11 CFR § 100.5(g)(2). Section 100.5(g)(2), a regulation adopted by the Commission for use in the determination of when committees are established, financed, maintained, or controlled by the same corporation, person, or group of persons under 2 U.S.C. § 441a(a)(5), sets out ten factors for the FEC to consider when determining that the whether committees should be considered affiliated (the "affiliation factors"). None of the affiliation factors is controlling, and the FEC has determined in numerous advisory opinions that there can be a finding of non-affiliation even where some of the affiliation factors exist. Advisory Opinion Number 2001-7

The facts in this case simply do not support the conclusion that the Victory Fund was affiliated with Rock Island or the State Party under Section 100.5(g)(2). Quite simply, the Victory Fund was not established, financed, maintained, or controlled by either Rock Island or the State Party. With respect to the State Party, the facts of this case do not implicate a single one of the ten affiliation factors. The Victory Fund and the State Party were not created by the same people, were not controlled by the same people, had no overlapping officers, and did not make contributions in a similar pattern. And with respect to Rock Island, at most the facts of this case appear to implicate only one of the ten affiliation factors. We have been unable to find a single FEC advisory opinion that found two committees to be affiliated based solely on the presence of one of the ten factors identified in 11 C F R. § 100.5(g)(2).

facts that would indicate that the Victory Fund and the State Party were established, financed, maintained, or controlled by the same person or group

Most of the "facts" cited in the Complaint as evidence of affiliation are not evidence at all. First, the FEC indicates that a finding of affiliation is supported by the fact that the name of the committee "shows the party's interest." Complaint at 13. While we do not fully understand this assertion, we do not believe that the name 17th District Victory Fund in any way supports the FEC's assertion that this entity was established, financed, maintained, or controlled by Rock Island (or by any other entity). The name merely represents the sentiments of its creators, local party leaders who were interested in achieving Democratic Party electoral victories in the 17th Congressional District. Second, the Complaint recited several "facts" that relate to other entities and that have no bearing on the activities of the Victory Fund. Thus, for example, MUR 4291 is completely irrelevant to the Victory Fund's activities, the fact that in the FEC found in that action that certain committees acted within ground rules set by the DNC in no way bears on the activities of the Victory Fund in 1998 and 2000. The Victory Fund did not act under any DNC ground rules, it did not take direction from the DNC, and it did not participate in any coordinated campaign effort with the DNC. If such ground rules existed, the Victory Fund was unaware of them. Third, the fact that the Victory Fund conducted a coordinated campaign is not evidence of affiliation. The Victory Fund, as a local party entity, conducted its own coordinated campaign within the 17th Congressional District of Illinois – undertaking exempt party activities and generic party activities that benefited the entire ticket within that geographic area. The fact that it coordinated a coordinated campaign within the 17th Congressional District is not evidence of its coordination of that campaign with any entities or persons outside the 17th Congressional District.

The sole fact recited in the Complaint that implicates one of the 11 C.F.R. § 100.5(g)(2) affiliation factors is the fact that Rock Island and the Victory Fund shared a single officer.² John Gianulis served as the unofficial Chairman of the

² The Complaint attempts to argue that the overlap of the Chairperson is actually two affiliation factors, stating that "if Mr. Gianulis or the Rock Island Committee had an active role in the creation of the Victory Fund that would serve as evidence of affiliation." Complaint at 12. That is not a correct statement of prior FEC precedent. Even if Mr. Gianulis were involved in the creation of the Victory Fund, this fact would not be evidence of affiliation between the two Committees. If Rock Island were involved in the creation of the Victory Fund it could be considered one of the factors considered by the FEC to determine affiliation. However, there is no evidence that Mr. Gianulis was involved with the

Mr. Brant S. Levine
December 23, 2002
Page 6

Victory Fund and as Chairman of Rock Island. However, this fact standing alone cannot establish affiliation. First, such a conclusion would be contrary to the findings of numerous FEC advisory opinions in which the Commission concluded that the subject committees were not affiliated despite the presence of several of the affiliation factors. Second, Mr. Gianulis was only one of several officers of both Rock Island and Victory Fund, none of the other officers overlapped. Third, Mr. Gianulis' position with these committees did not result in either committee controlling the other. Each committee had other officers, consultants and employees who participated in and made the majority of the decisions for the organization. Connie Engholm, an officer of the Victory Fund, managed and organized the day-to-day activities of the Victory Fund. Thus, Mr. Gianulis did not control the Victory Fund's day-to-day operations.

These facts cannot support a finding of affiliation under 11 C.F.R. § 100.5(g)(2). The majority of the Complaint argues that affiliation existed based on speculation and comparison to other parties and situations. The Commission should not take action against the Victory Fund based on a claim that "given the available information regarding the 'coordinated campaign' run by the Democratic Party in 1998, the local party committees likely would not only have coordinated their GOTV activities with the State Party, but the State Party would have exerted considerable control via approval over those activities." Complaint at 14. Irrespective of the Commission's experience with other Democratic Party organizations, in this case that did not happen. The State Party did not coordinate, approve or control any of the Victory Fund's activities. Indeed, the Victory Fund had nothing whatsoever to do with the State Party.

Because the Victory Fund was not affiliated with Rock Island and the State Party, there is no evidence to support the Commission's claim that the Victory Fund received excessive contributions.

creation of the Victory Fund on behalf of Rock Island or that any other officer of Rock Island was involved in the creation of the Victory Fund

B. Coordinated Party Expenditures

Contrary to the Commission's assertions, the Victory Fund did not make excessive coordinated party expenditures under 2 U.S.C. § 441a(d) ("441a(d) expenditures"). To the contrary, the Victory Fund did not make any 441a(d) expenditures on behalf of Lane Evans. Rather, the Victory Fund undertook an active GOTV effort during the 1998 campaign for the entire Democratic party ticket, none of which was required to be treated as a 441a(d) expenditure. The Victory Fund hired the Strategic Consulting Group ("SCG") to train volunteer workers for the Victory Fund. These volunteers then helped with the GOTV efforts of the Victory Fund, including contacting voters, helping with the distribution of materials, putting up yard signs, and door-to-door canvassing. The Victory Fund did not pay these individuals other than to reimburse them for expenses for food and gasoline, nor did SCG. The volunteers did receive a small stipend to cover their expenses, as Section 100 7(b)(15)(iv) permits without transforming volunteer activity into commercial activity. As the Commission conceded in the Complaint, the regulations were designed "to encourage volunteers to work for and with local and state political party organizations." Complaint at 29.

The Victory Fund paid the consulting firm on an appropriate federal/nonfederal split to recruit and manage its volunteers. The Complaint acknowledges that there are no Commission regulations regarding such an arrangement. Complaint at 29. Payment of volunteer recruitment and management through a consultant is not materially different from payment for such services in-house, and the use of SCG does not convert the volunteer activities into a "commercial" arrangement. The Victory Fund conducted general GOTV activities and the law does not require its expenditures to be allocated to any candidate.

The Victory Fund did pay for direct mail and postage services. As noted above, the Victory Fund, as part of its GOTV efforts, distributed materials under the FEC's exempt party activities provision (using the services of the volunteers described above) and distributed generic party materials through the mail. Again, these materials were paid on an appropriate federal/nonfederal split under the Victory Fund's allocation regulations and were not required to be allocated to any candidate.

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All of these activities were appropriate party committee activities to support the candidates running in the region. The Complaint attempts to argue that by merely performing the normal functions of a party committee, the Victory Fund made excessive contributions to one of the candidates. This is simply not true and there is no evidence to support the Commission's argument. Indeed, the "evidence" cited in the Complaint has no bearing on whether the Victory Fund's expenditures qualified as generic party expenditures. The fact that the Victory Fund was organized to help candidates within the 17th Congressional District does not change the nature of the Victory Fund's activities, which were designed to benefit all candidates in the area. Moreover, the proximity of the Victory Fund's office to that of Congressman Evans has no bearing on the nature of Victory Fund's activities. The only thing such evidence could possibly be used to show would be an inference of coordination between the Victory Fund and Friends of Lane Evans. However, under the law that existed in 1998 and 2000, party committees were permitted to coordinate generic party activity with the campaigns within their area. A local party committee was also legally permitted to coordinate its activities with other local party committees. A showing of coordination would therefore not transform the Victory Fund's generic activities into 441a(d) expenditures.

C. Receipt and Use of Prohibited Funds

The Victory Fund properly allocated its expenditures by utilizing the ballot composition allocation for payments to SCG. Under 11 C.F.R. §§ 106.5(d)(1) and (11) the ballot composition allocation is appropriate for generic party activity and voter drives. This is what the SCG volunteers did, and the allocation formula utilized by Victory Fund to pay SCG was proper.

The Complaint questions whether the Victory Fund's use of volunteers was in compliance with 11 C.F.R. § 100.8(b)(16), which provides that a local committee may pay for the costs of campaign materials used in connection with volunteer activities without such costs being considered an expenditure under the FECA. This exemption is available so long as (1) it does not include the cost of any broadcast, newspaper or direct mail (i.e., materials may only be used for volunteer activity), (2) the costs are allocated in accordance with the FECA, and (3) the payment is not made from

contributions designated by the donor to be used for a particular candidate. All of these factors were met

First, the Victory Fund properly utilized volunteers for its activities, and the Complaint does not state any facts to the contrary. Second, the Victory Fund properly allocated its expenditures. The Complaint alleges that “[g]iven the apparently close relationship between the Victory Fund and the Evans campaign, it is very possible that some of the Victory Fund’s communications and other activities were attributable to the Evans campaign alone, requiring 100% of the activity to be funded with permissible funds.” Complaint at 23. This is a completely speculative allegation that cannot be supported. The Victory Fund volunteers were carefully instructed to distribute literature that described all the Democratic candidates in the 17th District, or distribute packages that contained a piece of each candidate’s literature. The speculation that there may have been incidents of distribution of materials solely supporting Lane Evans is not supported by the facts and cannot support a claim that the Victory Fund impermissibly used nonfederal funds to pay for the speculative expenditures. The Complaint does not cite a single expenditure that it believes mentioned Lane Evans alone because no such communication exists. Accordingly, the Victory Fund allocated its expenditures properly according to law. Finally, the Victory Fund paid for its expenses with funds that were not designated for any candidate – in all cases the Victory Fund made “the final decision regarding which candidates [were] to be benefited by its expenditures.” 11 C.F.R. § 100.8(b)(16)(iii). Thus, the Victory Fund satisfied the criteria for exempt volunteer activity and there is no basis for the Commission’s assertion that it utilized prohibited funds for its activities.

Quite simply, there is absolutely no evidence that the activities of the Victory Fund were anything other than generic party activities and exempt activities. Its materials were distributed by unpaid volunteers, were not paid for with funds designated for a particular candidate, and were paid for with properly allocated funds. 11 C.F.R. § 100.8(b)(16).

The state of the law that existed at the time that the Victory Fund conducted activities in 1998 and 2000 was one in which local parties were permitted to conduct activities such as the ones that the Victory Fund conducted. While BCRA has largely

Mr Brant S Levine
December 23, 2002
Page 10

changed that law, the law that the Victory Fund was operating under was one in which "the Congress consciously sought to strengthen the role of parties in the electoral process" Advisory Opinion 1978-9³ Throughout the Complaint, the Commission appears to be applying more recent sentiments and developments in the law. There have been significant changes to the law since the time of the initial complaint in this matter But in 1998 a local party was permitted to conduct the activities the Victory Fund conducted There is no basis to find that any of the Victory Fund's activities violated the law.

Very truly yours,


Cassandra F. Lentolmer

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³ The Senate Report on the 1974 Amendments to the Act clearly outlined the contemplated role of parties under the election law reforms

"Thus parties will play an increased role in building strong coalitions of voters and in keeping candidates responsible to the electorate through party organization

"In addition, parties will continue to perform crucial functions in the election apart from fundraising, such as registration and voter turnout campaigns, providing speakers, organizing volunteer workers and publicizing issues " S Rept No 93-689, 93d Cong 2d Sess , 8 (1974)