

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

MUR 5031

17th DISTRICT VICTORY FUND and LINDA ANDERSON,
as Treasurer

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MEMORANDUM OF THE 17th DISTRICT VICTORY FUND IN RESPONSE TO
THE GENERAL COUNSEL'S PROBABLE CAUSE RECOMMENDATION

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RECOMMENDATION**

INTRODUCTION

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In this matter, the Office of the General Counsel has used affiliation principles to launch a baseless attack against the grassroots activity that local-level political parties and committees undertake every day to support their lesser-known candidates. The General Counsel has built an entire case around the efforts of the 17th District Victory Fund ("Victory Fund"), a local party committee, to conduct get-out-the-vote and other party activity in support of its candidates and to use Congressman Lane Evans's name and reputation as a "draw" to attract volunteers and contributor support in its efforts. Without factual support, it maintains that the Victory Fund is affiliated with Congressman Evans's campaign.

The General Counsel's conclusion that the Victory Fund was affiliated with Friends of Lane Evans during the 1998 and 2000 election cycles has led to its meritless claim that the Victory Fund accepted tens of thousands of dollars in unlawful funds. Contrary to the allegations of the General Counsel, however, the Victory Fund was not, and has never been, affiliated with Congressman Evans or his principal campaign committee. The Victory Fund was conceived and operated as a local party committee, and Congressman Evans, the Congressman for the Seventeenth District and the most prominent and well-known candidate

in the District, was instrumental to the Victory Fund's fundraising efforts and eventual success as a source of support for both federal and nonfederal candidates

Even more surprisingly, the General Counsel maintains in this matter that the Victory Fund made unlawful coordinated expenditures in support of Friends of Lane Evans. The General Counsel lacks the factual support for this claim, as each of the expenditures the Commission points to here were exempt party activities carried out in compliance with the Commission's regulations.

The factual allegations and legal conclusions the General Counsel has made in this matter are not proven. Almost as troubling, however, are the implications these allegations and conclusions could have on state- and local-level party activity throughout this country should the General Counsel's arguments prevail here. State and local parties commonly rely on the reputations and name recognition of the federal officeholders in their geographical areas to help their efforts in support of state and local candidates. If local party committees like the Victory Fund are unable to undertake grassroots-level support for federal and nonfederal candidates alike, the real casualties of this action will be the state and local candidates whose success depends, in large part, on the support and name recognition of the more prominent federal candidates.

STATEMENT OF FACTS

In 1997, local Democratic Party officials throughout the Seventeenth Congressional District of Illinois, representatives of state and local level candidate committees from that same area, and representatives of the federal campaign of that District's Congressman agreed

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that Democratic candidates in their Congressional District needed to enlist more grassroots support than the Democratic Party of Illinois was able to give them. The Victory Fund was formed to meet this need. Conceived as a local party committee, the Victory Fund was created to support all Democratic candidates, federal and nonfederal alike, from the Seventeenth Congressional District.

The focus of the Victory Fund's activities was on GOTV activities and other activities exempt from the definition of "contribution" under federal law. In both the 1998 and 2000 election cycles, the Victory Fund hired a consultant, Strategic Consulting Group ("SCG"), to which it delegated the oversight and execution of its volunteer activities, which included contacting voters, distributing materials, putting up yard signs, and canvassing voters door-to-door. Led by SCG, the Victory Fund undertook a number of activities in both the 1998 and 2000 election cycles in support of all Democratic candidates up and down the ticket. Contrary to the General Counsel's contention, these activities did not constitute contributions to Friends of Lane Evans.

ARGUMENT

I. THE GENERAL COUNSEL'S BRIEF FAILS TO SHOW THAT THE 17TH DISTRICT VICTORY FUND WAS NOT A LOCAL PARTY COMMITTEE.

Despite the General Counsel's conclusions, the Victory Fund was conceived and lawfully run as a local party committee in the Seventeenth District of Illinois. In its brief, the General Counsel claims that the Victory Fund was not a local party committee because the Democratic Party of Illinois did not assist the Victory Fund. (General Counsel Br. at 15.) This conclusion then colors the rest of the General Counsel's argument with respect to the

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Victory Fund's activities, all of which were carried out as exempt party activity pursuant to the Commission's rules governing state and local party committees

The General Counsel resorts to distorting Commission regulations defining "party committee" and "subordinate party committee" to support its argument. In a maneuver that is tantamount to ex post facto application of law, the General Counsel apparently relies on legal standards that were not in place at the time to make this determination. The Commission has since clarified this point, and the regulations at 11 C F R § 100.14 currently establish that an organization must be part of the official party structure and responsible for the day-to-day operation of the party in order to be a local committee of a political party. 11 C F R § 100.14 (2003). However, this regulation was not promulgated until 2002—years after the activities in question here. The Commission should not punish the Victory Fund for operating in good faith in the face of unclear law.

At the times relevant to this matter, Commission regulations were much less detailed with respect to the lawful composition of a local party committee. Commission regulations simply defined "party committee" as "a political committee which represents a political party and is part of the official party structure at the national, State, or local level." 11 C F R § 100.5(e)(4) (amended 2002) (emphasis added). Although the Commission had established much guidance on the requirements of a validly-formed "state committee" of a political party, see, e.g., Advisory Ops. 1998-2, 1997-7, neither the law nor Commission precedent established similar requirements for local party committees. The Commission admitted as much in a 1997 advisory opinion. Advisory Op. 1997-18 ("The Commission has not

previously examined in an advisory opinion the claims of an organization for local party committee status, as opposed to State committee or national committee status ”)

Nonetheless, the General Counsel here grafts onto the relevant law a nonexistent requirement that the Victory Fund must have had a relationship with the Democratic Party of Illinois or received some assistance from it in order to be part of the “official party structure” at the local level (General Counsel Br at 15) The law as it existed at the time required no such thing It was sufficient under the law at the time that a local party committee be part of the official structure at the local level

Moreover, the General Counsel seems to imply that the law required the Victory Fund to be a “subordinate party committee” of the state party and be responsible for the state party’s day-to-day operations in order to be a validly-constituted local party committee (General Counsel Br at 15) Not only did this requirement not apply to the Victory Fund at the times relevant to this matter, it would not necessarily apply to the Victory Fund under current law As noted above, at the times relevant to this matter the Commission had not established with certainty whether a local party committee had to be a “subordinate committee” of the state party in order to be a valid local party committee In addition, current law implicitly recognizes that a local-level political committee may be a local party committee without being a subordinate committee of a political party, as the law now differentiates between a “district or local committee” and a “subordinate committee of a state, district, or local committee ” See 11 C F R § 100 14

Finally, even if the Victory Fund were required to be a “subordinate committee” of the Democratic Party of Illinois to be a valid local party committee, the General Counsel has

misrepresented the regulation's requirements in its brief. As the definition read at the times relevant to this matter, a "subordinate committee of a State committee" was

[A]ny organization which is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the control or direction of the State committee

11 C F R § 100.14 (amended 2002)

Thus, a "subordinate committee" was any organization that was a) responsible for the day-to-day operation of the political party at the local level (which specifically included the district level), or b) under the control or direction of the state committee. According to the plain language of this definition, the Victory Fund was a subordinate committee, as it took responsibility for the day-to-day operation of the Democratic Party in the Seventeenth Congressional District of Illinois. This responsibility was consistent with the structure of the Democratic Party of Illinois, which operates, in part, along congressional district lines. In Illinois, state committeemen represent the congressional districts in which they live. Gianulis Deposition at 16, Ill. Comp. Stat. Ann. 5/7-8.

The General Counsel has inexplicably conflated the definition's two elements, concluding that because the Victory Fund was not "responsible for the day-to-day operations of the Democratic Party of Illinois," it was not a valid local party committee. (General Counsel Br. at 15.) The law did not require this; moreover, by this reasoning, no local party

committee would ever be lawfully constituted, as a local party committee does not typically run the day-to-day operations of a state party ¹

Therefore, contrary to the General Counsel's conclusions, according to the law at the time the Victory Fund was constituted and operated as a party committee from its inception It documented this with the Commission in 1998 when it filed its FEC Form 1 17th District Victory Fund FEC Form 1, Bates No 17D MUR 5031 000009 (indicating that the Victory Fund was a "local committee of the Democratic Party") Accordingly, it was "part of the official structure at the local level" in compliance with Commission regulations, and was a local party committee under applicable federal law

II. THE GENERAL COUNSEL'S BRIEF FAILS TO SHOW THAT THE VICTORY FUND WAS AFFILIATED WITH FRIENDS OF LANE EVANS.

Having erroneously concluded that the Victory Fund was not a local party committee, the General Counsel then goes on to argue that the Victory Fund was affiliated with Friends of Lane Evans However, a close examination of the actual legal standards of affiliation, and their application to these facts, reveals that this conclusion too is unfounded

¹ In a footnote, the General Counsel refers to a provision of Illinois law to conclude that "even under Illinois law, the Victory Fund does not qualify as a local party committee" (General Counsel Br at 16, n 13) The statute to which the General Counsel refers, Ill Comp Stat Ann 5/7-8, establishes the structure and procedures state political parties must follow to make nominations and fill vacancies See Ill Comp Stat Ann 5/7-7, 5/7-9 1 This statute is not dispositive here, as it does not circumscribe how local party committees may form themselves Nor does it prohibit local party committees from operating along congressional district lines to carry out exempt activities as the Victory Fund did

A. The General Counsel's Brief Fails to Show that Friends of Lane Evans Established the Victory Fund.

Commission regulations establish a number of factors that the Commission must consider "in the context of the overall relationship between committees" to determine whether they are affiliated 11 C F R § 100 5(g)(4)(ii) Commission Advisory Opinions indicate that no single factor is controlling See, e.g., Advisory Ops 2001-7, 2000-28

The first of the factors the General Counsel cites in this matter states that the Commission will examine

[W]hether a sponsoring organization or committee or its agent had an active or significant role in the formation of another sponsoring organization or committee

11 C F R § 100 5(g)(4)(ii)(I)

The General Counsel draws conclusions here that are contrary to the weight of the evidence It surmises that because Eric Nelson, Congressman Evans's campaign manager, was involved in discussions about the formation of the Victory Fund, he "conceived and created" the Victory Fund (General Counsel Br at 17) This conclusion contravenes the evidence developed through deposition testimony For example, when asked in his deposition to explain how the Victory Fund came into existence, Mr Nelson replied as follows

Mr Nelson After the 1996 campaign there was discussion among democratic party leaders, elected officials, interested parties, of the need to do a better job of – of organizing the basic components of campaigns, more so than—than had been done in the past

Questioner Okay And who was involved in these discussions?

Mr Nelson There were democratic elected officials, there were democratic party activists, party chairmen, members of interest groups, [and] myself

* * *

Questioner And who actually set up the Victory Fund?

Mr Nelson Connie Engholm, as the treasurer

(Nelson Deposition at 66, 70)

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In addition, to read communications between a federal candidate's campaign and local party officials concerning the need for, and inception of, a local party committee to result in affiliation and sharing of contribution limits would spell the end of local party committee activity nationwide This type of communication is commonplace and even necessary-- political parties exist to help aid their candidates' elections, and local-level political committees, traditionally less sophisticated than their federal counterparts, often look to federal candidates' campaigns for guidance As Congressman Evans's campaign manager, Mr Nelson of course had an interest in the success of a party committee within the Seventeenth Congressional District and in ensuring that the committee worked carefully and adequately to advance Congressman Evans's campaign Likewise, the party committee availed itself of the expertise and cooperation of Congressman Evans's campaign in order to carry out its duties effectively for all of its candidates

The General Counsel next concludes that because Mr Nelson was aware of and made recommendations about which individuals should become officers of the Victory Fund, Section 100 5(g)(4)(ii)(C) weighs in favor of finding affiliation (General Counsel Br at 18) Here the General Counsel again misrepresents the meaning of the relevant rule Section 100 5(g)(4)(ii)(C) states that the Commission should examine

Whether a sponsoring organization or committee has the authority or ability to hire, appoint, demote or otherwise control the officers, or other decisionmaking employees or members of another sponsoring organization or committee

11 C F R § 100 5(g)(4)(ii)(C)

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Whether Mr Nelson made recommendations or suggestions with regard to who would operate the Victory Fund is not relevant under the law The legal standard of 11 C F R § 100 5(g)(4)(ii)(C) requires that a particular sponsoring organization has “the authority or ability” to make hiring decisions or to control the officials within the sponsored organization As is the case in many congressional districts, in the 1998 and 2000 election cycles a small number of politically-active individuals and consultants worked throughout the Seventeenth District, many of whom had worked together on prior campaigns and most of whom knew of each other (See, e.g., Engholm Deposition at 82-83) It is common in such a community that, when an organization needs to find an individual or consultant to fill a particular need, one individual is able to recommend another whom he or she thinks would make a suitable candidate for the job For example, Mr Nelson believed Connie Engholm would make a suitable treasurer for the Victory Fund because she was familiar with federal reporting, and he discussed that with others involved in creating the Victory Fund (Nelson Deposition at 74, Engholm Deposition at 22-23)

Nowhere does the General Counsel allege that either Friends of Lane Evans or Mr Nelson had the authority or ability to control Victory Fund personnel that the regulation requires In fact, Mr Nelson never had such authority That Mr Nelson had some involvement in recommending staff is neither surprising nor legally significant in this case

B. The General Counsel's Brief Misreads the Law Regarding the Sharing of Common Officers and Consultants.

Next, the General Counsel distorts the facts of this case to conclude that Friends of Lane Evans and the Victory Fund had "common or overlapping officers or employees" that indicated "a formal or ongoing relationship" between them 11 C F R § 100 5(g)(4)(ii)(E). Contrary to the General Counsel's conclusion, this affiliation factor actually resolves against finding affiliation in this case There were no overlapping officers or employees between Friends of Lane Evans and the Victory Fund

The General Counsel asserts that Mr Nelson "effectively served as an officer of the Victory Fund," and this should weigh in favor of finding affiliation because he was an officer of Friends of Lane Evans as well However, Mr Nelson was not an officer of the Victory Fund, and did not hold any official position within the Victory Fund

Moreover, the General Counsel claims that the common service of consultants Mimi Alschuler and Perkins Coie, and volunteer work of Connie Engholm for Friends of Lane Evans in years well before the establishment of the Victory Fund, support its theory that the Victory Fund and Friends of Lane Evans shared common officers or employees (General Counsel's Brief at 20-21)

Whether the Victory Fund and Friends of Lane Evans shared common consultants is irrelevant as a matter of law, as consultants are not "officers or employees " A legal affiliation standard that penalized committees for hiring common consultants would be disastrous to political committees in small communities nationwide The Commission has acknowledged this as recently as last year when it explained in the context of the definition of "agency" that

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individuals can “wear multiple hats”—that is, can work for two separate entities and act as an agent of only one at a particular time Explanation and Justification for Final Rule on Prohibited and Excessive Contributions Non-Federal Funds or Soft Money, 67 Fed Reg 49,064, 49,083 (July 29, 2002) Commission precedent bears this out in MUR 297 the General Counsel examined the relationship between three committees who shared suppliers and contractors, and concluded that because the committees were in the same area and carried out similar activity, the existence of common suppliers did not alone support a finding of affiliation See MUR 297, General Counsel’s Report at 19 (March 29, 1977)

Second, that Connie Engholm once volunteered for Friends of Lane Evans is similarly irrelevant to the evaluation of this factor At the times relevant to this matter, Ms Engholm was the treasurer of the Victory Fund, and held no position at all within Friends of Lane Evans The inquiry under Section 100 5(g)(4)(ii)(E) examines officers and employees who work for the two examined entities at the same time Her previous work for Friends of Lane Evans has no bearing on this matter

C. The General Counsel’s Brief Fails to Show that Friends of Lane Evans Financed the Victory Fund.

The General Counsel makes much of the fact that Congressman Evans raised money for the Victory Fund, indicating that this is evidence of affiliation (See, e.g., General Counsel Br at 21-23) The Victory Fund does not contest that Congressman Evans helped the Victory Fund’s fundraising efforts It is the norm for a federal candidate to conduct fundraising for a local party committee in his congressional district To conclude that this activity could result in a finding of affiliation between the party committee and the candidate’s

committee, however, is contrary to Commission precedent and would destroy the relationship between party committees and federal candidates

Federal candidates regularly engage in fundraising activity to support their state and local parties. Both Congress and the Commission acknowledged this recently with passage of the Bipartisan Campaign Reform Act and its implementing rules, which carve out specific exceptions from the prohibition on the fundraising of nonfederal funds for federal candidates and officeholders who attend, speak, or appear as featured guests at fundraising events for state or local party committees. See, e.g., 11 C.F.R. § 300.64

That the same contributors gave to both Friends of Lane Evans and the Victory Fund is therefore not surprising, and should not result in a finding of affiliation here. The General Counsel indicated this view of the law in MUR 297, when it concluded that when political committees "espouse similar political philosophies," it would be "unreasonable" to conclude that the committees were affiliated because some contributors gave money to the same committees. MUR 297, General Counsel's Report at 18 (March 29, 1977). To conclude otherwise would subvert Commission precedent and severely undermine the relationship between political party committees and the candidates they support.

D. The General Counsel's Brief Fails to Show that Friends of Lane Evans Maintained and Controlled the Victory Fund.

The General Counsel's final allegation of affiliation is that Friends of Lane Evans maintained and controlled the Victory Fund. The General Counsel believes that because Mr. Nelson was consulted regarding the Victory Fund's activities and offered his opinions as to its activities, Friends of Lane Evans controlled the Victory Fund.

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First, Commission precedent indicates that an examination of whether one organization controls another pursuant to Section 100 5(g)(4)(ii)(B) requires the governing documents of the relevant organizations, such as their bylaws, charters, and policy statements, to grant authority to the controlling organization in order for this factor to indicate affiliation. See, e.g., Advisory Ops 1995-17, 1978-39. Here, the General Counsel can point to no such documentation, but instead relies on supposition and speculation alone.

Second, the General Counsel's assertion that the Victory Fund's eventual hiring of SCG indicates that Friends of Lane Evans "control[led]" the Victory Fund is logically unsound. The General Counsel posits as factual proof that "the Victory Fund would never have contracted with SCG were it not for the Evans Committee" (General Counsel Br. at 26). It has provided no evidence to support this assertion. Even if the General Counsel could show this statement to be true, it would prove nothing. As noted above, it is commonplace in the politically active community, as it is in any other business, for consumers to pass recommendations along to those who may be in the market for a particular service. That is precisely what happened here, as Mr. Nelson explained in his deposition:

Questioner [D]id you ask either Bob Creamer or Jerry Morrison to contact Mr. Gianulis [the Victory Fund chairman] about the campaign school?

Mr. Nelson I suggested they may want to do that
(Nelson Deposition at 97)

The General Counsel points to a memorandum that Mr. Nelson wrote to SCG complaining about certain aspects of its performance as evidence that Friends of Lane Evans and the Victory Fund were affiliated (General Counsel Br. at 27). That Mr. Nelson

attempted to assert his position as campaign manager for Congressman Evans to convince SCG to meet his requests is hardly surprising. The activities undertaken by SCG on behalf of the Victory Fund had a direct benefit on Congressman Evans's campaign. It was in his interest, therefore, for their efforts to be effective.

Nor do Mr. Nelson's attempts to influence the party's vendor indicate that Friends of Lane Evans was affiliated with the Victory Fund. Contrarily, this assertion actually undermines the General Counsel's core argument that Friends of Lane Evans created the Victory Fund "as a vehicle to raise otherwise prohibited and excessive funds to benefit" Congressman Evans (General Counsel Br. at 17). If Friends of Lane Evans had created the Victory Fund as a vehicle for the benefit of Congressman Evans, no one working on behalf of Friends of Lane Evans would have any incentive to hinder the Victory Fund's fundraising as Mr. Nelson threatened to do. That he made this suggestion indicates that Friends of Lane Evans was neither using nor counting on the Victory Fund as a source of funds.

The explanation for Mr. Nelson's memorandum is much simpler. Mr. Nelson knew that Congressman Evans was the largest "draw" the Victory Fund had to support its fundraising efforts and that SCG was working as a consultant for the Victory Fund. Mr. Nelson surmised that he could influence SCG by threatening its source of funding. This does not mean, as the General Counsel supposes, that Friends of Lane Evans had "effective control" over the Victory Fund (General Counsel Br. at 28). At most, it suggests that Mr. Nelson was attempting to use whatever appearance of influence he had to get his way, in no way does making such a threat indicate that Mr. Nelson actually had control over the Victory Fund.

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This memorandum actually shows that Friends of Lane Evans did not control the Victory Fund. Tellingly, the General Counsel does not claim in its brief that SCG actually followed Mr. Nelson's suggestions. Rather, undisputed testimony in this matter demonstrates that when Mr. Nelson attempted to exert influence through this memorandum, he failed. SCG did not in fact follow the suggestions and requests Mr. Nelson made in this memorandum (Nelson Deposition at 279, Engholm Deposition at 204.)

Finally, the General Counsel's conclusion that "[t]he officers of the Victory Fund played only a minimal role in its governance" (General Counsel Br. at 24) is plainly contrary to the weight of the evidence. Evidence developed in this matter indicates that Connie Engholm, the Victory Fund's treasurer, was responsible for and indeed did run its day-to-day activities. The General Counsel concedes that Ms. Engholm was responsible for processing and reporting all of the Victory Fund's contributions and making all of its expenditures-- the major activities of a political committee--which the General Counsel inexplicably believes to be "minimal." (General Counsel Br. at 24.) As Ms. Engholm testified at her deposition, decisions about the Victory Fund's specific activities, such as the content of its mailers, were made by consensus between Ms. Engholm, Mr. Nelson, and representatives and employees of SCG. (Engholm Deposition at 86.)

Accordingly, the General Counsel has failed to show that Friends of Lane Evans maintained or controlled the Victory Fund.

III. THE GENERAL COUNSEL'S BRIEF FAILS TO SHOW THAT THE VICTORY FUND MADE COORDINATED EXPENDITURES IN SUPPORT OF LANE EVANS.

In direct contravention of the evidence before it, the General Counsel has concluded that the Victory Fund made coordinated expenditures that resulted in unlawful contributions to Friends of Lane Evans. Again, the General Counsel is able to reach this conclusion only by distorting the applicable legal standards in order to hide the weaknesses in its argument.

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The Victory Fund was a validly-constituted local party committee and operated as such in accordance with Commission rules. The activities it carried out were valid exempt party activity pursuant to 11 C.F.R. § 100.7(b)(15), and nothing in the law prohibited the Victory Fund from coordinating these activities with the candidates it supported. The General Counsel spends almost ten pages of its brief explaining its theory that the Victory Fund coordinated its expenditures with Friends of Lane Evans and, the General Counsel concludes, its expenditures were therefore contributions from the Victory Fund to Friends of Lane Evans (See General Counsel Br. at 32-40). However, as these expenditures were all for exempt party activity, whether the Victory Fund coordinated this activity with Friends of Lane Evans is irrelevant.

At the times relevant to this action, as now, payments by a state or local party committee for campaign materials were exempt from the definition of "contribution" and were not subject to contribution limits as long as certain conditions were met. 11 C.F.R. § 100.7(b)(15) (amended 2002). For example, to constitute exempt party activity, payments could not be for public communications or political advertising. Id. No part of the funds used could have been designated for such use by the donor or contributed by a national party.

committee Id In addition, the materials must have been distributed by volunteers, and “not by commercial or for-profit operations ” Id

The General Counsel is incorrect in its argument that even if it accepted that the Victory Fund was a party committee, the Victory Fund’s activities were not valid exempt party activity under Commission regulations Each of the Victory Fund’s exempt party expenditures was carried out in strict compliance with the Commission’s rules The General Counsel cites three reasons for its contention to the contrary 1) SCG is a commercial operation that utilized paid employees, 2) the Victory Fund’s payments to SCG were for professional consulting services, and 3) SCG’s services were paid in part with funds from national party committees (General Counsel Br at 36)

That SCG is a commercial operation does not render the exemption for party activity inapplicable in this matter Notably, the General Counsel fails to cite any precedent for its assertion Nor is it relevant that the Victory Fund paid SCG for professional consulting services The exemption from the definition of “contribution” for exempt party activity does not prohibit a party committee that utilizes the exemption from hiring commercial operations that have paid employees, as long as volunteers actually distribute the materials The exemption requires only that distributed campaign materials “are distributed by volunteers and not by commercial or non-profit operations ” 11 C F R § 100 7(b)(15) (emphasis added) The Victory Fund hired SCG as a consultant to oversee and implement the GOTV and volunteer activity it undertook, in accordance with the law, SCG recruited and oversaw volunteers who distributed Victory Fund materials As long as volunteers distribute the materials, nothing in the law or Commission precedent indicates that hiring consultants to give

strategic advice, design the literature, print the literature or otherwise assist in a state or local party's activities renders use of the exempt party activity exception inapplicable

Indeed, if the Commission were to adopt the General Counsel's logic, no state or local party committee would be able to utilize the exemption with respect to printed materials if they hired a commercial printer to print the materials. Commission precedent does not indicate that it would support such a position. See, e.g., MUR 3248, General Counsel's Report at 12-13 (July 23, 1993) (where commercial vendors printed out the materials, but volunteers labeled, sorted, and addressed them and brought them to the post office, the materials constituted exempt expenditures)

Likewise, the law does not support the General Counsel's insistence that the Victory Fund's activities were not exempt party activity because the Victory Fund received funds from a national party committee. The rule states that "materials purchased with funds donated by the national committee to such State or local committee for the purchase of such materials, shall not qualify" as exempt party activity. 11 C F R § 100 7(b)(15)(vii). In order to render otherwise exempt party activity a contribution, the plain language of the rule requires the General Counsel to show that, at a minimum a) a national party committee donated funds to the Victory Fund, and b) the Victory Fund actually used these funds to purchase the materials it distributed. 11 C F R § 100 7(b)(15)(vii). The General Counsel does not attempt to argue or prove any of these three elements, instead, it alludes only to the fact that national party

committees made contributions to the Victory Fund during the time in question ² This assertion is inadequate under the law to show that a party committee's activity should be treated as a contribution

The General Counsel has failed to show that the Victory Fund made coordinated expenditures in support of Lane Evans The Commission should therefore dismiss this action

CONCLUSION

The Victory Fund was conceived and operated as a local party committee in the Seventeenth Congressional District of Illinois It carried out exempt party activity in support of all of its candidates in full compliance with federal law An examination of the plain language of the governing regulations indicates that the General Counsel has failed to show otherwise It simply has not proven that the Victory Fund was not a validly-constituted local party committee Nor has it shown that the Victory Fund was affiliated with Friends of Lane Evans, or that it made coordinated expenditures in support of Friends of Lane Evans

Moreover, should the General Counsel's arguments prevail here, it would destroy the relationship between local party committees and federal candidates—a relationship that Congress and the Commission have both long revered as a crucial element of our two-party system When Congress raised the registration and reporting threshold for local political party

² The Democratic National Committee made one contribution of \$15,000 to the Victory Fund in 1998 That contribution constituted less than 6% of the money the Victory Fund raised in 1998 The Democratic Congressional Campaign Committee made no contributions to the Victory Fund in 1998 and made only two small contributions to the Victory Fund totaling \$11,420 in 2000 These contributions represented less than 5% of the money the Victory Fund raised in 2000 There is

committees in 1979, it did so in part to reinforce the position of local party committees within the political system See S Rep No 96-319, at 2 (1979) ("An equally important objective of the bill is to encourage grassroots participation in the political process Several provisions in the bill are directed at enhancing and enlarging the scope of political party activity, as one means to encourage individual participation")

Increased federal regulation of local party activity has a devastating chilling effect on that activity As one prominent party official testified at the Senate Committee on Rules and Administration's hearings on the 1979 amendments

It has been our experience that local political party committees have become reluctant to engage in Federal-election related activity They generally do not have legal and accounting assistance available, and local committees, therefore, have chosen not to run the risks of Federal regulation

This, in turn, leads to less party identification with the candidate, and all of the evils that that creates

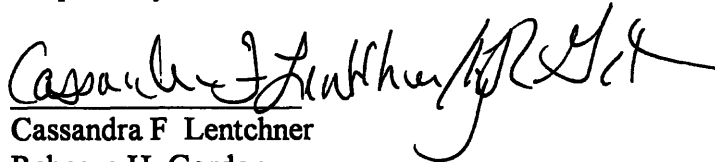
Hearing Before the Senate Comm on Rules and Administration, 96th Cong 34 (1979)
(statement of Morley Winograd, President, Association of State Democratic Chairpersons)

The Commission must not allow the General Counsel to use the Commission's enforcement procedures to distort relevant law and undermine grassroots political activity.

absolutely no basis upon which the General Counsel may tie these contributions to the Victory Fund's expenditures for exempt party activities

To do so runs counter to Commission precedent and to congressional intent. Accordingly, the Commission should dismiss this action.

Respectfully submitted,



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