

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF

MUR 5031

FRIENDS OF LANE EVANS and SAMUEL M GILMAN,
as Treasurer

**MEMORANDUM OF FRIENDS OF LANE EVANS IN RESPONSE TO THE
GENERAL COUNSEL'S PROBABLE CAUSE RECOMMENDATION**

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IN RESPONSE TO THE GENERAL COUNSEL'S PROBABLE CAUSE
RECOMMENDATION**

Due to the similarity of the content and the specific issues involved, Friends of Lane Evans joins in and adopts as its response the Introduction, the Statement of Facts, and Parts I-III of the Memorandum of the 17th District Victory Fund in Response to the General Counsel's Probable Cause Recommendation. As adopted here, citations to the relevant portions of the General Counsel's Brief therein are to the corresponding pages of the General Counsel's Brief with respect to Respondent Friends of Lane Evans.

**IV. THE GENERAL COUNSEL'S BRIEF FAILS TO SHOW THAT
FRIENDS OF LANE EVANS RECEIVED EXCESSIVE, IN-KIND
CONTRIBUTIONS FROM THE ROCK ISLAND COMMITTEE.**

To the best of Friends of Lane Evans's knowledge, the Rock Island Democratic Central Committee ("Rock Island Committee") was a local party committee operating in the Seventeenth Congressional District. The Rock Island GOTV Committee ("GOTV Committee") was a subset of the Rock Island Committee from which the Rock Island Committee operated its get-out-the-vote activity. The General Counsel alleges that Friends of Lane Evans received excessive in-kind contributions from the Rock Island Committee. This allegation is based on the General Counsel's unsupported claim that the Rock Island Committee coordinated certain expenditures expressly advocating the election of Congressman Evans with Friends of Lane Evans. However, as the Commission does not—

indeed can not—cite any particular communications that were the product of actual coordination between Friends of Lane Evans and the Rock Island Committee, it fails to show that these expenditures should have been treated as contributions under the Federal Election Campaign Act (the “Act”)

Under the Act, expenditures made “in cooperation, consultation, or concert, with or at the request or suggestion of, a candidate, his authorized political committee, or their agents” are considered contributions to the benefiting candidate and are subject to the applicable contribution limits 2 U S C § 441a(a)(7)(B)(i) The Supreme Court has made clear that the General Counsel may not presume that a party’s expenditures in support of its candidates are coordinated as a matter of law Colo Republican Fed Campaign Comm v Fed Election Comm’n, 518 U S 604, 619 (1996) Accordingly, to allege coordination, the General Counsel must show evidence that the Rock Island Committee actually cooperated or consulted with Friends of Lane Evans about the specific expenditures the General Counsel claims were coordinated

In addition, First Amendment principles require the General Counsel to make a factual inquiry as to each individual communication at issue See Fed Election Comm’n v Christian Coalition, 52 F Supp 2d 45, 92 (D D C 1999) Generalizations or observations about the relationship between Friends of Lane Evans and the Rock Island Committee are insufficient to support an allegation of coordination

The General Counsel’s argument that the Rock Island Committee made coordinated expenditures in support of Friends of Lane Evans fails, as it is not able to show that Mr Nelson, or any representative of Friends of Lane Evans, had substantial discussions with the

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Rock Island Committee about, or controlled the content of, any particular direct mail piece, radio advertisement, newspaper advertisement, or any other expenditure sufficient to meet the required legal standard Fed Election Comm'n v Christian Coalition, 52 F Supp 2d at 92 (See, e.g., Gianulis Deposition at 133-34) It instead relies on nonspecific allegations concerning the structure of the Rock Island Committee and the relationship between the Rock Island Committee and Mr. Nelson to support its allegation of coordination (General Counsel Br at 41, Nelson Deposition at 135) This is insufficient under the law, and may not sustain an allegation of coordination

In the absence of legally-sufficient evidence of coordination as to specific communications, the General Counsel presumes four of the Rock Island Committee's expenditures were coordinated based upon the structure and functions of the Rock Island Committee The General Counsel bases its presumption that coordination occurred with respect to these specific expenditures on the fact that Mr Nelson attended meetings of the Rock Island GOTV Committee at which the Rock Island Committee's communications were sometimes discussed (General Counsel Br at 41, Nelson Deposition at 135) However, the General Counsel does not offer evidence to suggest that Mr Nelson, or any other representative of Friends of Lane Evans, actually had control over the content of any of these four communications sufficient to satisfy the legal standard established in Christian Coalition See Fed Election Comm'n v Christian Coalition, 52 F Supp 2d at 92

Moreover, the General Counsel draws conclusions from Mr Nelson's testimony about the Rock Island Committee's activities that the evidence does not support For example, the General Counsel states that "Mr Nelson acknowledged that he specifically requested that

Rep Evans be featured in direct mail pieces produced and distributed by the GOTV Committee " (General Counsel Br at 41) However, Mr Nelson's testimony does not support this assertion, Mr Nelson testified only that he generally believed that it was important for Congressman Evans's name to appear on direct mail put out by the Rock Island Committee, and that, as Congressman Evans was a member of the GOTV Committee, his name often did appear on Rock Island Committee mailings along with other members of the GOTV Committee (Nelson Deposition at 129, 137) He did not testify, as the General Counsel states, that Mr Nelson had requested Congressman Evans to be "featured" in Rock Island Committee communications

The General Counsel ignores testimony developed in this case that directly contradicts its theory Ms Engholm, a frequent attendee at meetings held by the Rock Island GOTV Committee, testified as follows

Questioner With direct mail at the Rock Island GOTV Committee meetings, were representatives at the meetings able to review direct mail pieces before they went out?

Ms Engholm I think ideas were discussed I don't necessarily know that anybody saw the pieces until they were ready to be mailed

(Engholm Deposition at 147-48)

As the General Counsel can not show that the Rock Island Committee coordinated a single one of the relevant expenditures with Friends of Lane Evans, the Commission should dismiss this matter

CONCLUSION

The arguments referenced in the Introduction to this brief show that the Victory Fund was a validly-constituted local party committee operating in the Seventeenth Congressional District. An examination of the plain language of the governing regulations indicates that the General Counsel has failed to prove otherwise. Nor has the General Counsel 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.

The General Counsel has also failed to prove that Friends of Lane Evans accepted excessive contributions in-kind from the Rock Island Committee. It can not show, as the law requires, any instances in which Friends of Lane Evans or any of its agents actually had substantial discussions with any members or employees of the Rock Island Committee about any particular expenditure or controlled the contents of any particular expenditure.

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 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”).

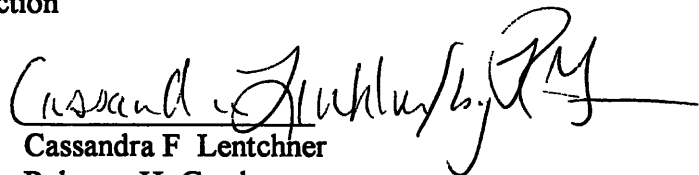
Increased federal regulation of local party activity has a devastating chilling effect on that activity As one prominent party official testified at the Senate Committee on Rules and Administration's hearings on the 1979 amendments

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



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