

OCT 10 2003

BEFORE THE FEDERAL ELECTION COMMISSION

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COMMISSION
SECRETARIAT

In the Matter of:

Friends of Lane Evans and Samuel M.
Gilman, as treasurer
17th District Victory Fund and Linda K.
Anderson, as treasurer
Rock Island County Democratic Central
Committee and John Gianulis, as
treasurer

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GENERAL COUNSEL'S REPORT #4

I. ACTIONS RECOMMENDED:

Find probable cause to believe that Friends of Lane Evans and Samuel M. Gilman, as treasurer, ("the Evans Committee") violated 2 U.S.C. §§ 441a(f), 433, 434, and 441b; find probable cause to believe that the 17th District Victory Fund and Linda Anderson, as treasurer, ("the Victory Fund") violated 2 U.S.C. §§ 433, 441a(f), 434, and 441b; find probable cause to believe that the Rock Island County Democratic Central Committee and John Gianulis, as treasurer, ("the Rock Island Committee") violated 2 U.S.C. §§ 433, 434, 441a(a), 441a(f), 441b, and 441d; and approve the appropriate conciliation agreements.

II. BACKGROUND

In the 1998 and 2000 general elections, the Evans Committee circumvented the Act's contribution limits by founding, funding, and governing a new political committee—the 17th District Victory Fund—to raise large amounts of money that would have been prohibited or excessive had the Evans Committee raised the money itself. Additionally, the Evans Committee

1 worked closely with the Rock Island Committee, a local party committee, to develop coordinated
2 public communications that advocated the reelection of Rep. Evans.

3 The General Counsel's Briefs, incorporated herein by reference, set forth the factual and
4 legal bases for this Office's recommendation that the Commission find probable cause to believe
5 that the Evans Committee, the Victory Fund, and the Rock Island Committee (collectively,
6 "Respondents") violated various provisions of the Act.¹ For the Evans Committee and the
7 Victory Fund, the primary violations arise from one of two alternative theories: either the
8 committees are affiliated and accepted excessive and prohibited contributions from persons who
9 contributed to both committees, or that the Victory Fund made excessive, in-kind contributions
10 to the Evans Committee. For the Rock Island Committee, the primary violations arise from its
11 coordinated expenditures with the Evans Committee and from its failure to register and report as
12 a political committee.

13 Respondents, who are represented by the same Counsel, submitted three similar
14 responses to the General Counsel's Briefs. In these responses, Respondents do not challenge the
15 extensive factual record compiled by this Office. Neither do Respondents produce any new
16 affirmative evidence. Rather, Respondents only challenge some of the legal conclusions stated

¹ On August 4, 2003, this Office hand-delivered General Counsel's Briefs to the Evans Committee and the Victory Fund, and on August 20, 2003, this Office served a Brief on the Rock Island Committee. After receiving tolling agreements, this Office granted a 35-day extension for the Evans Committee and the Victory Fund to respond, and a 20-day extension for the Rock Island Committee. The Evans Committee and the Victory Fund filed their responses on September 23, 2003, the Rock Island Committee on September 25, 2003. When combined with prior tolling agreements, both the Evans Committee and the Victory Fund have tolled the statute of limitations for 95 days, and the Rock Island Committee for 80 days.

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1 in the Briefs. Therefore, with the exception of the few points clarified below, this Office refers
2 the Commission to the Briefs to support the probable cause recommendations.²

3 **III. DISCUSSION**

4 **A. The Victory Fund is a Private Auxiliary of the Evans Committee, Not a**
5 **Bona-Fide Local Party Committee**

6 The Briefs contain factual evidence that conclusively demonstrates that the Evans
7 Committee alone established, financed, maintained, and controlled the Victory Fund. In
8 responding to the evidence presented in the Briefs, Respondents repeat their prior assertions that
9 the Victory Fund was established by a consortium of local political activists in the 17th
10 Congressional District, but fail to provide factual support for such assertions. For example, they
11 fail to produce a single person from the sprawling, fourteen-county congressional district who
12 will share credit for creating the Victory Fund. Neither do Respondents name anyone besides the
13 Evans Committee who raised money for the Victory Fund or influenced its operations. Finally,
14 Respondents failed to identify any local Democratic Party official or activist who will attest to
15 the uncorroborated claim that the Victory Fund took responsibility for the day-to-day operation
16 of the Democratic Party in the congressional district.³ 11 C.F.R. §§ 100.14(b).

17 Respondents argue that Connie Engholm, the Victory Fund's treasurer, created the
18 organization and ran the day-to-day operations. Yet Ms. Engholm testified that Rep. Evans's
19 campaign manager, Eric Nelson, first informed her of the Victory Fund and that she registered
20 the Victory Fund with the Commission only after consulting with Mr. Nelson and Counsel.

² This Report discusses only the probable cause recommendations set forth in the Briefs to Respondents. This Office will submit a subsequent General Counsel's Report that will recommend dispositions for other respondents and allegations in this matter.

³ The definition of party committee that is cited in the Briefs is found at 11 C F R. §§ 100 5(e)(4) and 100 14. These regulations were promulgated in 1980 and remained in effect during the time period at issue in this matter. See 45 Fed Reg 15080 (Mar 7, 1980). Although 11 C F R § 100 14 was revised in 2002, Respondents are mistaken in their assertion that the General Counsel's Briefs relied on the revised language.

1 Furthermore, while Ms. Engholm technically did make all expenditures—she signed the
2 checks—she was not aware of who actually hired the employees and vendors to which she wrote
3 the checks. Ms. Engholm made clear that Mr. Nelson was the only person who provided her
4 with direction. As the evidence cited in the Briefs demonstrates, the Evans Committee was not
5 simply one of many voices that influenced the Victory Fund, it was the *exclusive* voice. *See* GC
6 Br. to the Victory Fund at 24-29. Consequently, when the facts are viewed in the totality of the
7 circumstances, the conclusion is unmistakable: Eric Nelson, acting on behalf of the Evans
8 Committee, established, financed, maintained, and controlled the Victory Fund.

9 Respondents' argument that the Victory Fund served as a local party committee is
10 equally unavailing. The evidence showed that the Victory Fund shared no characteristics of
11 local party committees in Illinois. *See* GC Br. to the Victory Fund at 15-16. While Respondents
12 correctly note that an organization does not necessarily have to be affiliated with a state party to
13 qualify as a local party committee, it still must be part of the "*official* party structure." 11 C.F.R.
14 § 100.5(e)(4) (emphasis added). However, the Victory Fund operated outside of the official
15 party structure. If the Victory Fund can be a party committee without participating in the official
16 party structure, then any group of persons could declare themselves to be a local party committee
17 regardless of whether they had the support of party officers or even shared the philosophy of the
18 party. To see how a local organization can be unaffiliated with a state party but still operate
19 within the official party structure, one need only look to the Rock Island Committee. For
20 example, although the Rock Island Committee and the State Party claim to be unaffiliated with
21 each other (the Rock Island Committee received no federal funds from the State Party, nor did
22 the State Party control the Rock Island Committee), the Rock Island Committee is still
23 recognized by state and local party officials as the organization responsible for party activities in

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1 Rock Island County. The Victory Fund, however, was regarded by many simply as an arm of the
2 Evans Committee. *See* GC Br. to Victory Fund at 28-29.

3 Finally, contrary to Respondents' assertions, a finding of affiliation between the Evans
4 Committee and the Victory Fund would not prevent federal candidates from working closely
5 with local party committees. In this matter, for example, the Evans Committee met regularly
6 with the leadership of the Rock Island Committee and also provided funds to the Rock Island
7 Committee, but of course is not affiliated with it. The Rock Island Committee, however, is a
8 broad-based organization composed of elected leaders that operates year-round to further the
9 Democratic Party. By contrast, the Victory Fund effectively operated as a private auxiliary of
10 the Evans Committee and was active only in the months before elections when Rep. Evans
11 appeared on the ballot. A committee created and controlled by a federal candidate—especially
12 one whose primary purpose is to elect that federal candidate—cannot escape being affiliated with
13 the candidate's committee solely because it performs activities that incidentally benefit other
14 candidates.

15 Therefore, for the reasons set forth in the Briefs, the Office of General Counsel
16 recommends that the Commission regard the two committees as affiliated entities and find
17 probable cause to believe that the Evans Committee and the Victory Fund each violated 2 U.S.C.
18 §§ 433, 441a(f), 434, and 441b by failing to report each other as affiliated committees, by failing
19 to comply with the Act's limitations and prohibitions, and by failing to comply with the Act's
20 reporting requirements.

21 **B. Alternatively, the Evans Committee Received Excessive, In-Kind**
22 **Contributions from the Victory Fund**

23 Neither the Evans Committee nor the Victory Fund dispute that they made expenditures
24 in cooperation, consultation, or in concert with one another. Rather, they claim that the

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1 expenditures cited in the Briefs were exempt party activities not subject to contribution limits.
2 Yet the provision for exempt party activities applies only to party committees, and as discussed
3 in the Briefs, the Victory Fund does not qualify as a party committee. Moreover, even were the
4 Victory Fund able to engage in exempt party activities, the expenditures cited in the Briefs would
5 not qualify for the exemption.

6 The regulatory provision for exempt party activities applies to "costs of campaign
7 materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or
8 newsletters or yard signs)." 11 C.F.R. § 100.8(b)(16). Yet the payments of over \$200,000 to the
9 Strategic Consulting Group ("SCG") were not used to pay for any campaign materials; the
10 Victory Fund had other vendors who produced such items. Additionally, the regulatory
11 provision for exempt activities applies only to campaign materials "distributed by volunteers,
12 and not by commercial or for-profit operations." *Id.* SCG, however, is a for-profit entity that
13 employed salaried workers in the congressional district. The mere fact that SCG also integrated
14 volunteers into its activities does not negate its commercial status.⁴

15 Because the Victory Fund's disbursements do not qualify as exempt party activities, the
16 Victory Fund made, and the Evans Committee accepted, excessive, in-kind contributions.
17 Therefore, for the reasons set forth in the Briefs, this Office recommends that the Commission
18 find probable cause to believe that the Evans Committee violated 2 U.S.C. §§ 441a(f), 441b, and
19 434(b) by accepting and failing to report excessive, in-kind contributions from the Victory Fund
20 and find probable cause to believe that the Victory Fund violated 2 U.S.C. §§ 441a(a), 441b, and
21 434(b) by making and failing to report excessive, in-kind contributions to the Evans Committee.

⁴ Were the Victory Fund's logic to stand, a committee could hire a consultant to produce a range of public communications yet treat the entire disbursement as exempt activity so long as that consultant also rounded up some volunteers to assist in these efforts and hand out campaign literature.

C. **The Evans Committee Coordinated Expenditures with the Rock Island Committee**

As set forth in the Briefs, coordination between a party committee and a candidate committee occurs when expenditures are made "in cooperation, consultation or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents." 2 U.S.C. § 441a(a)(7)(B)(i). The Evans Committee does not dispute that Eric Nelson, on behalf of Rep. Evans, participated in meetings and discussions to plan the expenditures made by the Rock Island Committee for the communications that expressly advocated the election of Rep. Evans. Rather, the Evans Committee argues that the legal standard of coordination by nonparty outside groups established in *FEC v. Christian Coalition*, 52 F.Supp.2d 45 at 92, has not been met because there is no evidence that Mr. Nelson had control over the content of the specific communications cited in the Briefs.

Even if the *Christian Coalition* standard for coordination applied to party committee expenditures, there is still ample evidence to support the conclusion that the Rock Island Committee coordinated its expenditures with the Evans Committee.⁵ Mr. Nelson's testimony established that members of the GOTV Committee participated in substantial discussion over the content of the Committee's communications, as the design and content of the mailers was decided by consensus of the committee members. *See Nelson Tr.* at 134-35. In fact, Mr. Nelson testified that the GOTV Committee's mailers were shown to the members in draft form at the GOTV meetings before they were printed and distributed. *See Nelson Tr.* at 132. Mr. Nelson concedes that he attended the meetings of the Rock Island GOTV Committee and participated in these discussions. When

⁵ In *Christian Coalition*, the court discussed two general ways in which coordination with a candidate committee could occur. First, "expressive coordinated expenditures made at the request or the suggestion of the candidate or an authorized agent" would be considered coordinated. Second, absent a request or suggestion, an expressive expenditure becomes "coordinated" where the candidate or her agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over, a communication's (1) contents, (2) timing, (3) location, mode or intended audience (e.g., choice between newspaper or radio advertisement); or (4) volume (e.g., number of copies of printed materials or frequency of media spots) 52 F Supp 2d at 92

1 specifically asked if he provided input on the content of the mailers produced by the Committee in
2 1998, Mr. Nelson responded, "Of course." Nelson Tr. at 134. In short, Mr. Nelson exercised
3 control over the content of the GOTV Committee's communications and participated in substantial
4 discussion regarding the content of the communications, thereby fulfilling *Christian Coalition's*
5 standard of coordination. *Christian Coalition* 52 F.Supp.2d 45, 92 (D.D.C. 1999).

6 The Evans Committee erroneously argues that *Christian Coalition* requires the Commission
7 to present evidence as to the exact communications, specific to each individual expenditure, that
8 resulted in the alleged coordination. In fact, *Christian Coalition*, which dealt largely with
9 discussion as to the same topics covered in the communications but not the communications
10 themselves, contains no such requirement. The Rock Island GOTV Committee met for no other
11 reason than to discuss the specifics of its activities, particularly the content of the communications
12 that it planned to produce and distribute. Mr. Nelson recalled that he engaged in discussion and
13 coordination with regard to at least one of the specific communications at issue here. See Nelson
14 Tr. at 127; see also Ex. 7. Mr. Nelson testified that all communications produced and distributed by
15 the GOTV Committee were discussed at GOTV Committee meetings and that he participated in
16 those meetings. Having established this clear pattern and practice, and in the absence of any denial
17 as to such discussion, the Commission may reasonably infer that the Evans Committee coordinated
18 with the Rock Island Committee on the other specific communications at issue.

19 Consequently, because the Rock Island GOTV Committee coordinated with the Evans
20 Committee regarding the four communications that expressly advocated the election of Rep. Evans
21 in 1998, the expenditures made in connection with those communications constituted in-kind
22 contributions from the Rock Island Committee to the Evans Committee. See 2 U.S.C.
23 § 441a(a)(7)(B)(i); GC Br. to Rock Island Comm. at 5-11; GC Br. to Evans Comm. at 41-45.

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Accordingly, this Office recommends that the Commission find probable cause to believe that the Rock Island Committee violated 2 U.S.C. § 441a(a) and that the Evans Committee violated 2 U.S.C. §§ 441a(f), 434(b), and 441b. *See id.* Furthermore, this Office recommends that the Commission find probable cause to believe that the Rock Island Committee violated 2 U.S.C. § 441d for failing to include proper disclaimers on the communications expressly advocating the election of Rep. Evans, an allegation to which the Rock Island Committee failed to respond. *See GC Br. to Rock Island Comm. at 12.*

D. The Rock Island Committee Made Expenditures on an Ongoing Basis

The Rock Island Committee admits in its response that it should have registered with and reported to the Commission in 1998. However, it argues that it inadvertently stumbled across the line into committee status due to a small mistake that was confined to the 1998 election cycle, a mistake it claims was caused by the Committee's "unsophisticated" nature. Rock Island Comm. Reply Memo at 6. The evidence has shown, however, that the Rock Island Committee and its leader engaged in campaign activities that were considerable and continuous. For example, the Committee's chairman, John Gianulis, has served in that position for over thirty years, he served a four year term as treasurer of the Democratic Party of Illinois, and he served as chairman of the Democratic County Chairmen's Association. In addition, as discussed in the Briefs, the Rock Island Committee conducted a significant amount of campaign activity, making disbursements in excess of \$250,000 between 1998 and 2000.

Although the Rock Island Committee argues that its expenditures were confined to the 1998 election cycle, the evidence demonstrates otherwise. As pointed out in the Brief, as early as 1996, the Rock Island Committee made expenditures in connection with a direct mail piece featuring Presidential candidate Bill Clinton, and Senate candidate Dick Durbin. *See GC Brief to Rock Island Comm. at 13, fn 6.* The Rock Island Committee also continued making federal

expenditures in 2000, after it became aware of its "error."⁶ In fact, the Rock Island Committee produced and distributed at least four direct mail pieces for which the committee made expenditures within the meaning of the Act during the 2000 general election. *See, e.g.*, Exs. 28 and 29. These activities demonstrate that the Rock Island Committee had an ongoing pattern of making federal expenditures without registering as a political committee and reporting those expenditures, as required by the Act. Therefore, this Office recommends that the Commission find probable cause to believe that the Rock Island Committee violated 2 U.S.C. §§ 433 and 434 by not registering with, and reporting to, the Commission; and 2 U.S.C. §§ 441a(f) and 441b for accepting excessive and prohibited contributions.

E. Respondents Violated Other Reporting Requirements

Respondents do not contest the other reporting violations discussed in the Briefs. The Evans Committee, for example, is silent on the Brief's discussion of its failure to report all bank accounts. *See* GC Brief to the Evans Comm. at 47. Likewise, the Victory Fund makes no mention of the Brief's discussion of its failure to timely register with the Commission or its failure to properly report and allocate its disbursements. *See* GC Brief to the Victory Fund at 14, 40. Therefore, regardless of whether they are affiliated with each other, this Office recommends that the Commission find probable cause to believe that the Evans Committee violated 2 U.S.C. § 433 and that the Victory Fund violated 2 U.S.C. §§ 433, 434 and 441b.

IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTIES

⁶ The Briefs do in fact allege that the Committee made expenditures, within the meaning of the Act, beyond the 1998 election cycle. The only activities that the Briefs limit to the 1998 election cycle are the in-kind contributions from the Rock Island Committee to the Evans Committee.

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CONCILIATION DISCUSSION

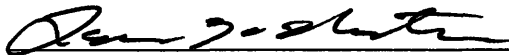
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V. GENERAL COUNSEL'S RECOMMENDATIONS

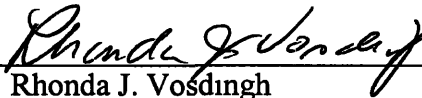
1. Based on the theory that the Evans Committee and the Victory Fund are affiliated:
 - a. find probable cause to believe that Friends of Lane Evans and Samuel M. Gilman, as treasurer, violated 2 U.S.C. §§ 441a(f), 433, 434, and 441b;
 - b. find probable cause to believe that the 17th District Victory Fund and Linda Anderson, as treasurer, violated 2 U.S.C. §§ 433, 441a(f), 434, and 441b; and
 - c. approve the attached conciliation agreement for the Evans Committee and the Victory Fund.
2. Based on the theory that the Evans Committee and the Victory Fund are not affiliated:
 - a. find probable cause to believe that Friends of Lane Evans and Samuel M. Gilman, as treasurer, violated 2 U.S.C. §§ 441a(f), 433, 434, and 441b;
 - b. find probable cause to believe that the 17th District Victory Fund and Linda Anderson, as treasurer, violated 2 U.S.C. §§ 433, 441a(f), 434, and 441b; and
 - c. approve the appropriate conciliation agreements for the Evans Committee and for the Victory Fund.
3. Find probable cause to believe that the Rock Island County Democratic Central Committee and John Gianulis, as treasurer, violated 2 U.S.C. §§ 433, 434, 441a(a), 441a(f), 441b, and 441d;
4. Approve the attached conciliation agreement for the Rock Island Committee; and
5. Approve the appropriate letters.

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10/10/03
Date



Lawrence H. Norton
General Counsel



Rhonda J. Vosdingh
Associate General Counsel for Enforcement



Mark D. Shonkwiler
Assistant General Counsel



Brant S. Levine
Attorney



Kathleen M. Dutt
Attorney

Attachments:

1. Proposed conciliation agreement for the Evans Committee and the Victory Fund
2. Proposed conciliation agreement for the Rock Island Committee
3. Alternative conciliation agreement language for coordinated expenditures

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