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Office of the General Counsel
Attn: Lisa Stevenson, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: Gary Johnson Victory Fund Advisory Opinion Request Concerning
Joint Fundraising Committees Accepting Contributions and Holding Them
in Escrow Until Member Committees Qualify as State Party Committees

Dear Ms. Stevenson:

Pursuant to 52 U.S.C. § 3018, Gary Johnson Victory Fund (“GJVF”) seeks an advisory opinion from the Commission concerning applicability of commission regulations concerning joint fundraising committees to political committees that have not yet qualified as state political parties. GJVF is an authorized committee of Gary Johnson, a candidate for President of the United States. Because this request is being submitted within 60 days of the November 2016 general election, the Commission must render its response within 20 days. 52 U.S.C. § 30108(a)(2).

I. FACTUAL BACKGROUND

GJVF is a joint fundraising committee which registered with the Commission on May 24, 2016. It collects contributions, pays fundraising expenses, and disburses net proceeds on behalf of 25 member committees as of the date of this letter. Of those 25 committees, one is a candidate committee (Gary Johnson 2016, *see* 52 U.S.C. § 30102(e)(3)(A)(ii)), 6 have not submitted advisory opinion requests seeking recognition as state political party committees at this time¹, and 18 have submitted advisory opinion requests to the Commission seeking recognition as state political party committees, but have not yet received such recognition from the Commission². These 18 member committees will be referred to as the “Unapproved Party Committees.” In addition, 2 of the 18 committees have previously been recognized as state political party committees through Commission advisory opinions, but subsequently terminated registration with the Commission and have now re-registered with the Commission.³

As a joint fundraising committee, GJVF raises funds on behalf of its member committees up to the sum of the legal limit for each participant. *See* 11 C.F.R. § 102.17(a)(1)(i) (authorizing political committees to form joint fundraising committees); *id.* § 102.17(c)(6) (permitting joint fundraising committees to disburse proceeds from joint fundraising efforts “according to the formula stated in the

¹ These include the Libertarian Party of Arkansas, Libertarian Party of Colorado, Libertarian Party of Michigan Executive Committee Inc., Libertarian Party of Illinois, Montana Libertarian Party and Libertarian Party of North Carolina.

² These include the Alaska Libertarian Party, Libertarian Party of Alabama, Arizona Libertarian Party, Inc., Libertarian Party of Hawaii, Libertarian Party of Idaho, Libertarian Party of Georgia Inc., Libertarian Party of Maine, Libertarian Party of Maryland, Libertarian Party of Mississippi, Libertarian Party of Minnesota, Missouri State Libertarian Party, Libertarian Party of New Mexico, Libertarian Party of North Dakota, Libertarian Party of South Dakota, Libertarian Party of Tennessee, Libertarian Party of Texas, Libertarian Party of West Virginia, and Wyoming Libertarian Party.

The FEC database currently lists the Libertarian Party of Arkansas, Libertarian Party of Georgia, Libertarian Party of Maryland, Libertarian Party of Texas, and Libertarian Party of West Virginia as “non-qualified non-party” committees or “non-party PACs,” and the other committees as “non-qualified party” committees.

³ These include the Arizona Libertarian Party, *see* A.O. 2007-02 (Mar. 9, 2007) (identified in the FEC database as a non-qualified party committee); and Libertarian Party of Maryland, *see* A.O. 2004-40 (Dec. 2, 2004) (identified in the FEC database as a non-qualified, non-party committee).

fundraising agreement”). The maximum contribution GJVF may accept from any person equals the sum of the maximum permissible contributions that person could make to each of GJVF’s members. *See id.* § 102.17(c)(5).

The Unapproved Party Committees participating in GJVF are currently considered non-connected political committees (“PACs”) for purposes of campaign finance law. *See* 52 U.S.C. § 30101(15) (providing an entity qualifies as a “State committee” only if the Commission “determine[s]” it qualifies for such status). Consequently, a person is permitted to contribute a maximum of only \$5,000 annually to each Unapproved Party Committee. *Id.* § 30116(a)(1)(C). Once the Commission approves these committees’ pending requests to be recognized as state political party committees, the contribution limit increases to \$10,000 annually per committee. *Id.* § 30116(a)(1)(D).

Based on these contribution limits, GJVF may presently accept no more than \$122,700 from any person on behalf of the participating committees. If and when the Unapproved Party Committees’ advisory opinions requests are granted and they are recognized as state political parties, their respective contribution limits increase to \$10,000 each. GJVF consequently will be permitted to accept a maximum of \$242,700 from any person.

II. QUESTION PRESENTED

May GJVF solicit, accept, and hold in escrow contributions to reflect the increase in contribution limits for Unapproved Party Committees that will occur if and when the Commission approves their pending advisory opinion requests and recognizes them as state political parties, subject to the following conditions:

- GJVF will allocate among its members each contribution it receives, pursuant to its joint fundraising agreement, based on a \$10,000 contribution limit for each Unapproved Party Committee;
- GJVF will not disburse to any Unapproved Party Committee proceeds from any contribution allocated to that committee in excess of \$5,000, unless and until the Commission recognizes it as a state political party committee. Rather, GJVF will hold in escrow, in a separate segregated account, any proceeds from a contribution allocated to an Unapproved Party Committee exceeding \$5,000.
- neither GJVF nor any of its member committees will receive any augmentation of, or benefit to, their other funds by reason of the funds held in escrow;
- neither GJVF nor any of its member committees will pledge, assign, or otherwise obligate any funds held in escrow;
- in the event the Commission declines to recognize an Unapproved Party Committee as a state party committee, GJVF will return any escrowed funds allocable to such a declined committee to the applicable contributors.

In other words, may GJVF presently solicit and accept contributions totaling \$242,700 from a person, holding in escrow any funds it receives from a person in excess of \$122,700, unless and until

the Commission approves the Unapproved Party Committees' pending advisory opinion requests for recognition as state political party committees.

III. LEGAL ARGUMENT

The Commission should allow GJVF to solicit and accept contributions up to \$242,700, which reflects the additional funds (\$5,000 per contributor) Unapproved Party Committees will be able to accept once the Commission recognizes them as state political party committees, on the condition GJVF hold those additional funds in escrow until such recognition occurs.

The Commission has regularly allowed political committees to accept contributions that would not become legally permissible until a later point in time, so long as the funds are held in escrow. For example, in *Miller*, A.O. 1980-68 (July 11, 1980), the Commission recognized, when a run-off election is held, it is an “election” to which separate contribution limits apply. It concluded a candidate running in a primary election may accept contributions “designated for a potential runoff” so long as they are “held in escrow to be spent after the primary or returned to the contributors if no runoff occurs.” *Id.* at 2. The Commission stated “contributions may be made and received with respect to a potential runoff election before the actual need for that election is determined . . .” *Id.*; *see also* *Krueger*, A.O. 1983-39, at 2 (Dec. 5, 1983) (holding a candidate “may currently accept and designate otherwise lawful contributions for a [possible future] runoff election, subject to the redesignation, or refund, of such contributions if there is no runoff election).

Likewise, here, the Unapproved Party Committees may presently accept only \$5,000 per person in contributions, but a future event may occur—the Commission’s approval of their pending advisory committee requests—that would increase the limit to \$10,000 per person. Just as a candidate may accept and hold funds in escrow based on the future possibility he may participate in a runoff election, so too should political committees be permitted to accept and hold funds in escrow based on the future possibility (indeed, strong likelihood) the Commission will approve pending advisory opinion requests to be recognized as state political parties. Moreover, just as candidates are required to return funds being held in escrow to contributors if a runoff does not occur, GJVF and the Unapproved Party Committees would be required to return any funds being held in escrow in the unlikely event the Commission does not recognize them as state party committees. Indeed, this situation presents a stronger case for the use of escrow funds than *Miller*, because a contribution to GJVF would result in allocations to Unapproved Party Committees in excess of \$5,000 will be held in escrow by GJVF, rather than the committees themselves.

The Commission’s ruling in *ActBlue*, A.O. 2014-19 (Jan. 15, 2015), also supports approving GJVF’s proposed use of escrow accounts in this case. In *ActBlue*, a non-connected PAC acted as an intermediary or conduit for earmarked contributions for various candidates. *Id.* It sought permission to allow people to “make contributions earmarked for the Democratic Party’s eventual nominee for President in 2016, prior to such nomination, but *ActBlue* would forward the contributions to the nominee only if the nominee is a woman.” *Id.* at 2. Thus, *ActBlue* sought to act as a conduit for a hypothetical possible future female candidate, despite the fact she had “not yet formed [an] authorized presidential campaign committee[.]” *Id.* It would hold the funds in escrow until a woman became the Democratic nominee for President, at which point it would transmit the funds to her. *Id.* If a woman did not become the Democratic nominee for President in 2016, however, then *ActBlue* would transfer the funds to an alternate recipient. *Id.*

The Commission permitted ActBlue to act as a conduit by accepting funds for a potential future female presidential nominee, even though there was no such recipient for those funds at the time the contributions were made. *Id.* at 3. It found no problem with ActBlue accepting and holding the funds in escrow pending the occurrence of a possible future event: the Democratic Party's nomination of a woman as its candidate for President. Likewise, here, GJVF should be permitted to accept and hold in escrow contributions pending the Unapproved Party Committee's future recognition as state political party committees.

This case is also similar to National Right to Life Committee, Inc. ("NRLC"), A.O. 2008-20 (Jan. 30, 2009). NRLC, a non-profit corporation, established a separate segregated fund, NRLCPAC. The corporation submitted an advisory opinion request, asking whether it could fund certain advertisements out of its general treasury. *Id.* at 1-2. While the Commission was considering the request, NRLCPAC paid for the advertisements. *Id.* at 2. After the Commission issued an advisory opinion concluding NRLC could have funded the advertisements itself, NRLC filed a subsequent advisory opinion request asking whether it could reimburse NRLCPAC for the cost of the advertisements. The Commission held NRLC could reimburse the expenses, noting, "NRLC used its separate segregated fund, NRLCPAC, as a precaution against legal liability. . . NRLC should not be penalized for taking these precautionary measures to comply with the law." *Id.* at 4. Here, the Unapproved State Parties have likewise submitted advisory opinion requests seeking recognition as state parties, which would increase the amount people may contribute to each of them from \$5,000 to \$10,000 annually per person. GJVF should be permitted to hold funds in escrow as a similar precautionary measure for the Unapproved State Parties until the FEC approves their advisory opinion requests and confirms they satisfy the requirements for party committee status (which they presently do) or refund such escrowed funds with respect to any Unapproved Party Committee for which a request is denied.

IV. CONCLUSION

For these reasons, the Commission should allow GJVF to accept and hold in escrow funds on behalf of the Unapproved Party Committees in excess of \$5,000 per contributor (up to a limit of \$10,000 per contributor), pending the Commission's approval of their pending requests to be recognized as state party committees.

Respectfully submitted,



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