

August 29, 2008

Representative Lance Cargill  
% Robert McCampbell, Attorney of Record  
20 N. Broadway, Suite 1800  
Oklahoma City, OK 73102-8273

**-CERTIFIED MAIL-**  
RETURN RECEIPT REQUESTED

Republican State House Committee  
% Todd A. McKinnis, Attorney of Record  
Kirkpatrick Bank Building  
15 E. Fifteenth Street, Suite 200  
Edmond, OK 73083-1569

Oklahoma County Republican Committee  
% Tom Prince, Attorney of Record  
204 E. Second Street  
Edmond, OK 73083-2911

RE: INFORMATION NUMBER IV-2007-008 / LETTER OF PUBLIC REPRIMAND  
Lance Cargill, Member of the Oklahoma House of Representatives; Republican State House  
Committee, an Oklahoma Political Action Committee; and the Oklahoma County Republican  
Committee, an Oklahoma Party Committee; Respondents

TO ALL RESPONDENTS:

The Ethics Commission of the State of Oklahoma met in regular meeting August 22, 2008. It considered this matter in executive session, as required by law. In open meeting, referring to it by number, the members unanimously voted to issue all referenced Respondents a public reprimand for five (5) separate counts of violations of the Rules of the Constitutional Ethics Commission [“the Rules”], Section 1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. Supp. 2008, Ch. 62, App.

#### STATEMENT OF THE CASE

Simply put, this is a case of the redirection of campaign contributions intended for one party committee, to another, contrary to the intent of the donors. It resulted in the contributors being made to support candidates against their conscience and in violation of several provisions of the Ethics Rules, which are designed to safeguard campaigns in Oklahoma.



- (A) be deposited with the State Treasurer to the credit of the General Revenue Fund;
- (B) be returned to the contributors pursuant to any formula approved by the candidate; provided, any amount returned to a contributor shall not exceed the amount of the original contribution;
- (C) be contributed to a charitable organization;
- (D) be retained by the candidate or candidate committee for use in a future election for a six-year period following the General Election for the same or a different office;
- (E) be used to defend legal actions or proceedings arising out of the campaign, election, or the performance of the candidate's official duties as a state officer; provided that such funds shall not be used to defend criminal charges;
- (F) be used for a community activity;
- (G) be used for political activity;
- (H) **be transferred to the state or local central committee of a political party; or**
- (I) be distributed using a combination of these options.

\* \* \*

Id., (3)

[emphasis added]

The Rules thus permit a candidate's surplus campaign funds to be transferred to the state or local central committee of a political party.

REPUBLICAN HOUSE MEMBERS TRANSFER SURPLUS CAMPAIGN FUNDS  
TO THE STATE PARTY "VICTORY FUND"

During the months of September and October in the 2004 election cycle, then-Minority Leader Todd Hiatt [Hiatt] solicited campaign funds from sitting members of the Republican Caucus of the Oklahoma House of Representatives ["Republican House members"]. He asked that contributions of surplus campaign funds be made to the State Party's "Victory Fund." The latter was a designated portion of ORP's state bank account. It was used for "get-out-the vote" efforts, voter registration drives, party advertising and to help elect Republicans to state and federal office. The fund was held and operated exclusively by the Oklahoma Republican Party ["ORP" or "Republican State Party" or "State Party"]. Hiatt's solicitation was thus in accordance with Rules' Section 257:10-1-20(a)(3)(H).

Those solicited understood that their Victory Fund contributions would be spent according to decisions made by appropriate committees and officers of the Republican State Party. The Chairman of the latter was, and is, Gary Jones [“Jones”]. Jones explained that, according to internal rules, State Party support is never the decision of a handful of people, but of many, drawn from various levels of the party. Jones said the goal is to have broad representation on the committee which decides.

#### THE STATE REPUBLICAN PARTY PURSUES A BROAD-BASED AGENDA

The Victory Fund was to promote a statewide Republican effort in the 2004 elections. As noted, it encompassed a statewide voter registration drive and “get-out-the-vote” campaign. It included party advertising.

RSHC members were told that a “rising tide lifts all boats.” In other words, these measures would benefit every Republican on the ballot.

The State Party also supported certain ORP-selected state and federal candidates. Its roster included those seeking statewide office, as well as federal candidates. For instance, former-Congressman Tom Coburn received State Party support in his bid for a United States Senate seat.

#### COUNTY PARTIES ADVANCE A MORE MODEST AGENDA

County parties direct their efforts in different ways. Their means are more modest, as are their goals. Even the larger ones – like those in Oklahoma and Tulsa Counties – raise far less money than does the State counterpart. County Party committees support fewer candidates. Historically, they focus on local races. While not confined to such, they often concentrate on county elections or candidates to the State Legislature who represent areas within their borders.

Oklahoma County Republican Committee [“OCRC” or “Oklahoma County Party” or “County Party”] is a large County Party. It is an active one. Nonetheless, that entity did not fund statewide “get-out-the-vote” campaigns. It did not support candidates for federal office. Its agenda did not mirror that of the State Republican Party. Its interests were narrower. Until 2004, OCRC may have occasionally contributed outside of Oklahoma County, but its focus was upon candidates representing districts within its boundaries.

The State and County Republican Parties therefore did not share agendas. Given what later transpired, their interests in 2004 were actually adverse.

#### CARGILL’S ROLE IN THE 2004 CAMPAIGNS

Representative Lance Cargill [“Cargill”] participated in the 2004 Victory Fund solicitation of Republican House members. He did this in his individual capacity. But, in reality,

he acted as the “de facto” Chairman of the Republican State House Committee [“RSHC” or “House PAC”]. Several of those solicited thought he, in fact, headed RSHC.<sup>1</sup>

The operation was successful. Pursuant to the Victory Fund solicitation, the following House members wrote checks from their surplus funds to the State Party. Checks were written on the cited dates and in these amounts:

Cargill for the House Committee (9/14/04), \$1,500; Friends of Don Armes Committee (9/04/04), \$1,000 and (10/06/04), \$3,000; Friends of Chris Bengel Committee (9/13/04), \$3,500; Mark Liotta for State Rep. Committee (9/14/04), \$5,000; Todd Hiatt for State Rep. Committee (10/15/04), \$5,000; Newport State Rep. Committee (10/18/04), \$1,000; Friends of John Smaligo Committee (10/15/04), \$3,000; Friends of John Smaligo Committee (10/22/04), \$2,000; Friends of Raymond Vaughn Committee, \$5,000; Friends of Susan Winchester Committee, \$3,000; John Trebilcock for State House Committee (10/11/04), \$3,500; Friends of Ron Peters Committee (10/11/04), \$4,000; Committee to Re-Elect Fred Perry (10/6/04), \$1,000; Friends for Dale Dewitt 2004 Committee (10/8/04), \$2,500.<sup>2</sup>

At the point of tendering these instruments, House members intended them for the State Party, since it alone had the “Victory Fund.”<sup>3</sup>

But, the checks were diverted. Instead of the State Party – as was intended by the donors – they ended up in the coffers of the OCRC.

The reason was clear. Cargill told members that 2004 was the year the Republicans could win a majority of seats in the Oklahoma House of Representatives. Like all elections, success requires money. Cargill felt that Victory Fund money raised from House members should be spent on House races. Operatives appeared at State Party headquarters with some House members’

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<sup>1</sup>According to the Rules, Cargill could not serve as the official chairman of RSHC without committee contributions counting against his personal campaign limits. It was thus necessary for another to serve as titular committee chairman.

<sup>2</sup>The total amount of Republican House member surplus fund-contributions to the Victory Funds was \$44,000.

<sup>3</sup>Several Republican House members later issued a joint statement that they did not mind that their donations were re-directed to the County – as opposed to the State – Republican Party Committee. The Commission notes that, when tendering a campaign contribution, present donative intent controls. A subsequent declaration does not change the payee.

campaign checks, together with a list of where those funds should be spent. Jones reluctantly permitted it on an emergency basis, but then stopped the practice. His position was that Victory Fund money was to be spent on Victory Fund – meaning statewide – efforts, and not confined to carefully selected House races.

This posed a problem. As noted, the Rules permit transferring surplus campaign funds to a State or Central Committee of a political party – not a PAC, like RSHC. Since the ORP had declined to earmark House-raised funds for expenditures in certain House races, another party committee was needed. Al Mertens, then serving as OCRC Chairman, agreed to accommodate the Cargill/RSHC plan. The OCRC board later acquiesced.

#### ORP VICTORY FUND CHECKS ARE ROUTED TO THE COUNTY PARTY

The County Party received the above- listed donations intended for the ORP Victory Fund. It began paying for polling, compensation of campaign workers called “Field Reps,” and other expenses associated with select House races.

While the record supports a broader finding, the Commission has chosen to base its case upon the testimony of four Republican House members who have maintained throughout they never intended donations of their surplus campaign funds to go anywhere but the State Republican Party. Those four are: Hiatt, Representative Susan Winchester [“Winchester”], former Representative Ray Vaughn [“Vaughn”] and Representative John Trebilcock [“Trebilcock”].

The surplus campaign checks – including the checks of these four – were either collected from Republican House members by Cargill and/or his designees, agents or employees. Or, they were mailed to the State Party, but somehow ended up with titular Chairman of RSHC, Aaron Curry [“Curry”]. These surplus campaign checks were made payable to “ORP, the “Oklahoma Republican Party” or a variation of that name – with the intent that the funds go to the State Party.<sup>4</sup>

A number of Rule violations ensued.

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<sup>4</sup>All checks were made payable to the “Oklahoma Republican Party,” except the following: Two checks from Smaligo were designated: “Republican Party.” Representative Fred Perry left blank the name of the payee. Representative Jim Newport was asked for a second check to replace the first. The latter – and it alone – was made out to “Oklahoma County Republican Party.” Representative Mark Liotta’s check bore a memo which stated: “Victory Fund Campaign Contribution” – consistent with his making the check to the “Oklahoma State Republican Party.” After-the-fact, the word “State” was crossed out and “County” was written in, instead.

## RULE VIOLATIONS

### COUNT ONE

The Rules require those gathering or receiving contributions to provide them to the payee's treasurer within five (5) days of receipt. The State Republican Party Treasurer never received them.

In gathering Republican House members' checks to the Victory Fund, Cargill and RSHC were jointly and severally charged with providing these instruments to the State Party treasurer within five days. This was never done, in violation of Rules' Section 257:10-1-10(d), which provides:

#### **Campaign depositories and campaign accounts**

\* \* \*

(d) All contributions, other than in-kind contributions, accepted by the committee, directly or indirectly, shall be deposited in a campaign account within ten (10) days after acceptance. All contributions received by a deputy treasurer or agent of the committee, including the candidate, on behalf of a committee shall be provided to the treasurer or, in the treasurer's absence, the deputy treasurer not later than five (5) days after receipt.

\* \* \*

Section 257:10-1-10

### COUNT TWO

Certain of these House member checks were tendered without a Contributor Statement. Contributions of John Trebilcock and Ray Vaughn were not accompanied by the Statement. Nor has any been provided to date, because neither ever filled out nor signed the form.

Both checks were cashed in the absence of a Contributor Statement. Their contributions were therefore accepted, and deposited, in violation of Rules' Section 257:10-1-2(c).

#### **Contributions**

\* \* \*

(c) **Contributor statement.** Within ten (10) business days of accepting a single contribution exceeding fifty dollars (\$50.00), or before accepting multiple contributions from a single source which exceed fifty dollars (\$50.00) in the aggregate, persons accepting contributions must obtain from each contributor a statement which shall include:

- (1) the date the contribution was given;
- (2) the name and address, occupation [e.g."retail sales clerk"] and employer [e.g. "Dillard"], or principal business activity of the contributor; a contribution from a person other than an individual or a committee shall be reported by the name of the person or committee and not the individual who signed the check;

- (3) the amount; if in-kind, a description of the contribution and a good faith estimate of its fair market value;
- (4) a declaration that the contribution is for a campaign in the State of Oklahoma, and the contribution is freely and voluntarily given from the contributor's personal property, if an individual, or the person or committee's property, if other than an individual;
- (5) a declaration that the contributor has not been directly or indirectly compensated or reimbursed for the contribution, if an individual, and, if a person other than an individual or a committee, that the person or committee has not been compensated or reimbursed for the contribution by persons:
  - (A) other than those from whom contributor statements have been received and of whom disclosure has or will be made; or
  - (B) if from persons exempted from the definition of political action committee, by other persons; and
- (6) the signature of the contributor, or in the case of a committee, the treasurer or, in the treasurer's absence, the deputy treasurer of the committee.

Persons accepting contributions from contributors who contribute by payroll deduction, dues check-off, or similar process shall be required to obtain only one contributor statement annually or at such other times as a change is made in the deduction, check-off, or similar process.

Section 257:10-1-2(c)

### COUNT THREE

Curry offered OCRC the campaign checks with the stipulation that the funds be used to pay specified expenses incurred by RSHC. Expenses included background research into opposing candidates by the law firm of Hartzog, Conger et al., polling by Cole Hargrave Snodgrass & Associates for a 300-sample survey, "brushfire polls" conducted by Lowther & Shapard in certain races, and various salaries or fees of Field Reps or consultants. Earmarking contributions to pay expenditures for the benefit of certain candidates violated the provisions of Rules' Section 257:10-1-2(j)(2) as follows:

### Contributions

- (j) **Anonymous and earmarked contributions.**

\* \* \*

- (2) For purposes of the contribution limitations imposed by this section, all contributions made by a person, either directly or indirectly, to or for the benefit of a particular candidate committee, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to

such candidate committee, shall be treated as contributions from such person to such candidate committee. It shall be prohibited for an intermediary or a conduit to make a contribution to a committee in his or her own name rather than the name of the original source of such contribution. For purposes of this paragraph, an intermediary or conduit means a person, who is not the treasurer, deputy treasurer or agent of a committee, but who is given a contribution by another with the understanding that it will be contributed to that committee. The reports shall show the correct name of the person actually making the contribution.

\* \* \*

Section 257:10-1-2(j)(2)

As noted, after accommodating no more than two requests on an emergency basis, Jones declined to permit RSHC to earmark Victory Funds for specific races. It was this decision that caused the House PAC to turn to OCRC to do its bidding.

COUNT FOUR

Cargill, RSHC and OCRC then devised a scheme whereby RSHC would circumvent the State Party and direct how the surplus funds were spent. They were aware that surplus candidate campaign funds may not be used as contributions to political action committees ["PACs"]. That precluded depositing the funds in RSHC. They were also aware that, under Section 257:10-1-20(3)(H), the Rules permit surplus campaign funds to be transferred to the state or local central committee of a political party.

**Use of campaign contributions and use of surplus funds**

(a) **Candidate committees.**

\* \* \*

(3) **Use of surplus funds.** The surplus funds may:

\* \* \*

(H) be transferred to the state or local central committee of a political party; or

\* \* \*

Section 257:10-1-20(a)(3)(H)

In violation of this rule, Respondents planned to deposit these checks into a county party and have it pay expenses they or RSHC incurred to support their hand-picked candidate campaigns. The plan included earmarking contributions by limiting how the funds might be spent. The County Party was to function as an intermediary or conduit.

Cargill at first considered the Creek County Republican Party as the intermediary/conduit. OCRC was chosen, instead. The matter was discussed with OCRC then-Chairman Al Mertens [“Mertens”] who agreed. Curry – or his agent, employee or designee – delivered all or part of the above listed checks to OCRC, along with the specific bills and invoices the County Party was to pay.

Rules’ Section 257:10-1-10(d) requires that contributions accepted by an agent of a committee be turned over to the treasurer, or deputy treasurer, within five days of receipt. If directly or indirectly accepted by a committee, the rule then requires the money be deposited in the committee’s campaign account within ten (10) days after such acceptance. As noted, Curry, who accepted the checks from Cargill, failed to timely deliver the checks to the State Party’s treasurer – or deputy treasurer – within five days of receipt in violation of Section 257:10-1-10(d). Instead, he presented them to Mertens, who caused them to be deposited, illegally, in OCRC’s account. OCRC thus violated this provision.

Outside the lawful time line for acceptance, the County Party not only deposited these checks, it began paying for political consultants, polls and Field Rep’s – expenses incurred by Cargill/RSHC in furtherance of their plan to use State Party money, not for the ORP roster, but earmarking the funds to help elect their personal choice of candidates.

A key part of the scheme was that OCRC was to act as the conduit for RSHC. As noted, the County Party was to accept money from Victory Fund contributors and pay bills to support designated candidates.

Under Section 257:10-1-2(j), contributions which are in any way directed through an intermediary, or conduit, to a candidate committee in its name – rather than the name of the original source – are treated as contributions from the true donor. This means that RSHC checks given to candidates – together with its expenses incurred to assist these candidates (paid for by OCRC) – counted against RSHC’s contribution limits.

#### COUNT FIVE

Curry served both as RSHC Chair and Treasurer from January 5, 2003 to January 28, 2005. Jenny Parton [“Parton”] then took over both positions. Parton continued in her dual role until October 17, 2006, when she was replaced by Carolyn Pickthorn [“Pickthorn”], who likewise served as Chair and Treasurer. According to Ethics Commission records, Pickthorn continues in these capacities to date. All have certified the RSHC Campaign Contributions and Expenditures Reports [“Form C-1R”]. These C-1Rs are inaccurate, in that they fail to include the funds involved in the conduit scheme. All are thus in violation of Rules’ Section 257:10-1-14(a)(3) and (20) which provide.

### Report contents

(a) **Basic reporting form.** The campaign contributions and expenditures report shall include:

\* \* \*

(3) the following information about monetary contributions, including loans accepted from a person other than a committee:

(A) the total sum of all contributions accepted during the current reporting period . . .

(B) the total of contributions accepted for the campaign-to-date or calendar year-to-date . . .

\* \* \*

(20) the signature, or typed signature on electronically filed forms of the treasurer or, in the treasurer's absence, the deputy treasurer, who shall certify that prior to accepting any contribution requiring a contributor statement during this campaign-to-date for candidate committees or calendar year-to-date for other committees, the treasurer, or deputy treasurer in the treasurer's absence, received a contributor statement therefor and who shall each attest to the report's accuracy and veracity. Within five (5) business days of the treasurer or deputy treasurer of a candidate committee filing a required report, the candidate, or the treasurer of a candidate committee for a candidate seeking judicial office, shall confirm in writing that the report filed was true and correct. The signature shall be verified.

Section 257:10-1-14(a)(3) and (20)

In agreeing to this plan, Mertens and other OCRC officers joined Cargill/RSHC in contravening Rules' Sections 257:10-1-10(d) and 10-1-2(j)(2). All checks, exceeding fifty dollars (\$50.00), were accepted unlawfully by the treasurer of a different committee and in the absence of a Contributor Statement. As such, these checks were illegally accepted, deposited and spent by the County Party and were used to pay expenses incurred by RSHC.

From January 28, 2002 to July 6, 2006, Elizabeth A. Rolen ["Rolen"] served as OCRC Treasurer. In such capacity, she prepared and filed a series of C-1Rs on behalf of OCRC. She dated the form and, as treasurer of OCRC, signed her name to the following:

To the best of my knowledge and belief, the above is a true and correct compilation.

**Prior to accepting a contribution requiring a contributor statement during this campaign or calendar year-to-date, the treasurer or deputy treasurer received a contributor statement therefor.** . . . FORM C-1R, Certification, at line 26

[emphasis added]

OCRC violated Rules' Section 257:10-1-14(a)(20) by filing a report in the absence of Contributor Statements. Each instance forms a separate count. OCRC also violated that provision when Rolen, as its treasurer, certified as correct totals – and campaign-to-date totals – which

illegally included contributions that OCRC was not authorized to accept and did so without the mandatory Contributor Statements. Each instance of filing such a report also forms a separate count of a Rule 10-1-14(a)(20) violation.

Robert L. Bowman [“Bowman”] took over from Rolen on July 6, 2006. Ethics Commission records show he served as OCRC Treasurer from that time to October 1, 2007. As treasurer, he also prepared and filed C1-R reports which violated these same provisions. OCRC likewise violated Rules’ Section 257:10-1-14(a)(20) by certifying as correct totals, and campaign-to-date totals, which illegally included contributions without the Contributor Statement. Each instance of filing such a report constitutes a separate count of a Rule 10-1-14(a)(20) violation.

A C-1R report filed January 25, 2007 by Representative Mike Duane Jackson [“Jackson”], the Republican nominee in House District #40, listed an expenditure of \$3,500 marked as contribution for voter recount. But, on May 17, 2007, Jackson filed an amended C1-R. It showed that a monetary transfer of \$3,500 had been made on November 9, 2006 to OCRC. Jackson then deleted the expenditure of the same date for the voter recount. In this matter, Cargill/RSHC again utilized OCRC as a conduit/intermediary. The one solicited surplus funds for the other, so that the County Party might contribute the exact amount for use in the voter recount. In so doing, they again violated Rules’ Sections 257:10-1-2(a)(2) and 10-1-20(a)(H).

In addition, OCRC used House members’ surplus campaign funds to pay the following expenses:

Cole Snodgrass Hargrave & Associates — House District [“HD”]13, Stuart Ericson, \$2,700; HD45, Thad Balkman, \$2,450; HD23, Sue Tibbs, \$2,450; HD09, Tad Jones, \$2,200; HD26, Kris Steele, \$2,800; HD61, Gus Blackwell, \$2,450 — less \$5,000 "paid by PAC;" Party check #2,500 paid \$10,550 toward these expenses. A facsimile transmittal from Veda Shapard, Lowther & Shapard, advised that Aaron Curry had instructed the forwarding of invoices (\$500 each) to the Oklahoma County Republican Committee for payment of the following: brushfire polls for the races of HD 61 (Gus Blackwell), HD 13 (Stuart Ericson), HD 8 (Bill Kendrick), HD 12 (Mark Wofford), HD 22 (Preston Edgar), and HD 26 (Kris Steele).

Bills from several consultants were also paid by the Oklahoma County Republican Party for candidates races well outside Oklahoma County.

PROCEEDINGS BEFORE THE COMMISSION  
AUTHORITY TO INVESTIGATE

The Commission has carried out the investigation of this information pursuant to its constitutional mandate to “investigate and, when it deems appropriate, prosecute” violations of its rules governing ethical conduct of state officers, employees and state campaigns. OKLA. CONST. Art.

29, §4(A); §3(A) and (B) The instant proceeding has been conducted in accordance with Rules' Chapter 30.

#### SCOPE OF THE INVESTIGATION

The Commission has conducted a thorough investigation into this matter. It has interviewed witnesses, collected documents and searched records. It fully reviewed multiple aspects of this matter. The material facts are not in dispute.

The breadth of these facts, coupled with the complexity of the investigation, has caused the Commission to pursue the RSHC and OCRC committees, rather than their officers. Individuals' names are required for purposes of the fact record.

#### JURISDICTION/VENUE

The Commission has and retains both in personam and subject matter jurisdiction over Respondents and all aspects of the conduct in question. The acts charged against Respondents occurred in Oklahoma County, State of Oklahoma, where venue lies.

#### REPRESENTATION BY COUNSEL

The Commission notes each Respondent was been apprised of the right to be represented by counsel. Each has been represented by counsel of his/their own choosing. Attorneys of record have been afforded the opportunity to reply to all allegations. All did, in fact, reply. Their responses were carefully reviewed and considered by the Commissioners.

## **REPRIMAND**

This letter constitutes the Commission's Public Reprimand of the Respondents for the cited rule violations. It does not speak to state statutes or provisions of the Oklahoma Constitution but, instead, is confined to the Rules which the Commission enforces.

The Commissioners are charged with enforcing ethical conduct of state officers, employees and campaigns in Oklahoma. This reprimand is the act of the full Commission and not of its staff. It was authorized in open meeting by a unanimous vote of all four Commissioners.

In accordance with agency policy, the final draft of this document was approved by the undersigned, in his capacity as Ethics Commission Chairman. A copy will be immediately provided to the Capitol Media Corps for public dissemination.

This concludes the matter.

Respectfully,

A handwritten signature in black ink that reads "Don Bingham". The signature is stylized with a long horizontal line extending to the right.

Don Bingham, Chairman  
Oklahoma Ethics Commission

DB: ra/mh

xc: Capitol Media Corps