January 24, 2013

MEMORANDUM

TO: The Commission

FROM: Anthony Herman
General Counsel

Kevin Deeley
Acting Associate General Counsel

Amy Rothstein
Assistant General Counsel

Cheryl Hemsley
Attorney

Subject: Draft AO 2012-39 (Green Party of Virginia)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the Open Session agenda for January 31, 2013.

Attachment
Dear Ms. Clement:

We are responding to your inquiry regarding the status of the Green Party of Virginia as a State committee of a political party under the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations. The Commission concludes that the Green Party of Virginia is a State committee of a political party because: (1) the Green Party of the United States is a political party; (2) the Green Party of Virginia is part of the official structure of the Green Party of the United States; and (3) the Green Party of Virginia is responsible for the day-to-day operations of the Green Party of the United States at the State level.

Background

The facts presented in this advisory opinion are based on your letter received on December 14, 2012 and other publicly available information.

The Green Party of Virginia is a political committee that is registered with, and reports to, the Commission. In 2001, a representative of the Green Party of Virginia executed on its behalf a document entitled, “Official Affiliation Agreement between the Green Party of Virginia and the Green Party of the United States” (“Affiliation Agreement”). In it, the Green Party of Virginia agreed to affiliate with, and abide by the bylaws of, the Green Party of the United States; to elect delegates from Virginia to represent it on the Coordinating Committee of the Green Party of the United States; to
use its best efforts to support ballot access for national candidates nominated by the

Green Party of the United States; and to nominate candidates for State, local and Federal
election. More recently, the Secretary of the Green Party of the United States confirmed
that the Green Party of Virginia is an affiliate of the Green Party of the United States.

See Letter To Whom It May Concern, from William Dickinson, Secretary, Green Party of
the Unite States (Dec. 3, 2012) ("Dickinson Letter"). The Commission has recognized
the Green Party of the United States as a “political party” since 2001. See Advisory
Opinion 2001-13 (Green Party of the United States).

In its bylaws, the Green Party of Virginia states that it “shares kinship, common
goals and values with other Green Parties and Green organizations.” Bylaws of the
(1) provide for the election of officers\(^1\) and describe their specific responsibilities, \(id.,\)
Art. XIV; (2) detail the organization’s purpose, political practices, relationship with local
Green party organizations, and membership practices, \(id.,\) Arts. III, IV, VI, VII;
(3) describe how organizational decisions are made, reviewed, and overturned, \(id.,\) Arts.
VIII, IX, X; and (4) provide for the nomination and endorsement of candidates for local,
regional, State, and Federal office, \(id.,\) Art. XI.

The Bylaws also establish a number of committees to assist the Green Party of
Virginia in operating and complying with State law. The Interim Committee is
responsible for conducting the organization’s day-to-day business, making decisions on
matters that “cannot reasonably be put off” until the next meeting of the Green Party of

---

\(^1\) These officers are two Co-Chairs, Press Secretary, Treasurer, and Webmaster.
Virginia, issuing statements on behalf of the organization, and hiring and overseeing the
activities of staff. *Id.*, Art. XVII. The Central Committee is responsible for certifying
nominations. *Id.*, XVI. The Bylaws also provide for the establishment of standing
committees by the organization’s membership. *Id.*, Art. XVIII.

The Green Party of Virginia placed a candidate for President, Ms. Jill Stein, and a
candidate for the U.S. House of Representatives, Mr. Joe Galdo, Jr., on the 2012 general
election ballot in Virginia. Each candidate raised more than $5,000 for the general
election.

**Question Presented**

Is the Green Party of Virginia a State committee of a political party within the
meaning of the Act and Commission regulations?

**Legal Analysis and Conclusion**

Yes, the Green Party of Virginia is a State committee of a political party within
the meaning of the Act and Commission regulations.

A “State committee” is an organization that, by virtue of the bylaws of a “political
party,” is part of the official party structure, and is responsible for the day-to-day
operations of the political party at the State level. 2 U.S.C. 431(15); 11 CFR 100.14(a).

A “political party” is an “association, committee, or organization that nominates a
candidate for election to any Federal office whose name appears on the election ballot as
the candidate of such association, committee, or organization.” 2 U.S.C. 431(16);
11 CFR 100.15.
The determination as to whether a State party organization qualifies as a State committee of a national political party turns on three elements: (1) the national party with which the State party organization is associated must be a “political party”; (2) the State party organization must be part of the official structure of the national party; and (3) the State party organization must be responsible for the day-to-day operations of the national party at the State level. See, e.g., Advisory Opinion 2012-36 (Green Party of Connecticut); Advisory Opinion 2009-16 (Libertarian Party of Ohio); Advisory Opinion 2008-13 (Pacific Green Party of Oregon). The Commission addresses each of these elements in turn.

(1) Qualification of Green Party of the United States as a Political Party

First, the Commission must assess whether the national party qualifies as a “political party” under the Act and Commission regulations. See 2 U.S.C. 431(15), (16); 11 CFR 100.14, 100.15; Advisory Opinion 2012-36 (Green Party of Connecticut); Advisory Opinion 2008-16 (Libertarian Party of Colorado); Advisory Opinion 2008-13 (Pacific Green Party of Oregon).

The Commission has previously concluded that the Green Party of the United States is a political party. See Advisory Opinion 2001-13 (Green Party of the United States). The Commission is aware of no new facts that would alter that conclusion.

(2) Status of Green Party of Virginia as Part of Official Structure of the Green Party of the United States

Second, the Green Party of Virginia must qualify as part of the official party structure of the national party, pursuant to 11 CFR 100.14. Under the July 2001
Affiliation Agreement, the Green Party of Virginia agreed, through its representative, to affiliate with, and abide by the bylaws of, the Green Party of the United States; to elect delegates from Virginia to represent it on the Coordinating Committee of the Green Party of the United States; to use its best efforts to support ballot access for national candidates nominated by the Green Party of the United States; and to nominate candidates for State, local, and Federal election. The Bylaws also provide that the Green Party of Virginia may join or affiliate with regional, national, and global “Green organizations”; may send delegates to these organizations; and will endorse and support only those national candidates selected by the Green Party nominating convention. Bylaws, Art. V. In addition, the Dickinson Letter confirms the Green Party of Virginia’s status as an affiliate of the Green Party of the United States. The Commission thus concludes that the Green Party of Virginia is part of the official structure of the Green Party of the United States. See Advisory Opinion 2012-36 (Green Party of Connecticut).


Third, the Green Party of Virginia must maintain responsibility for the day-to-day operations of the Green Party of the United States at the State level. 2 U.S.C. 431(15); 11 CFR 100.14. The Commission evaluates this third element by considering: (a) whether the organization has placed a “candidate” on the ballot (thereby qualifying as a “political party”); and (b) whether the bylaws or other governing documents of the State party organization indicate activity commensurate with the day-to-day functions and operations of a political party at the State level. See Advisory Opinion 2012-36 (Green
Party of Connecticut); Advisory Opinion 2008-16 (Libertarian Party of Colorado);

Ballot placement on behalf of a candidate is required because the requesting
organization’s existence as a political party is necessary for State committee status. A
State party organization must actually obtain ballot access for one or more “candidates,”
as defined in the Act. See 2 U.S.C. 431(2), (15), (16); 11 CFR 100.3(a), 100.14(a),
100.15; see also Advisory Opinion 2012-36 (Green Party of Connecticut); Advisory
Opinion 2009-16 (Libertarian Party of Ohio).

In this instance, the Green Party of Virginia successfully placed two candidates on
the State ballot in 2012: Ms. Jill Stein, candidate for President, and Mr. Joe F. Galdo, Jr.,
candidate for the U.S. House of Representatives. Each individual received contributions
in excess of $5,000, thus qualifying as a “candidate” under the Act and Commission
regulations. See 2 U.S.C. 431(2); 11 CFR 100.3(a). Accordingly, the Green Party of
Virginia is a “political party” under the Act.

The Bylaws indicate activity commensurate with the day-to-day functions and
operations of a political party at the State level. They establish the organizational
structure of the Green Party of Virginia and describe the election process for, and
responsibilities of, party officers. They also establish a Central Committee to certify
approved nominations, Bylaws, Art. XVI, an Interim Committee to handle the day-to-day
administrative functions of the Green Party of Virginia, id., Art. XVII, and standing
committees to handle finances, bylaws and procedures, platform, issue advocacy and
candidate exploration, and other party functions. The Bylaws are consistent with the
State party rules reviewed in previous situations in which the Commission has recognized
the State committee status of a political organization. See, e.g., Advisory Opinion
2012-36 (Green Party of Connecticut); Advisory Opinion 2009-16 (Libertarian Party of
Ohio). Therefore, the Bylaws satisfy the requirements of 2 U.S.C. 431(15) and 11 CFR
100.14(a).

Accordingly, because all three elements of the definition of “State committee” are
satisfied, the Commission determines that the Green Party of Virginia qualifies as a State
committee of a political party under the Act and Commission regulations.

This response constitutes an advisory opinion concerning the application of the
Act and Commission regulations to the specific transaction or activity set forth in your
request. See 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
of the facts or assumptions presented, and such facts or assumptions are material to a
conclusion presented in this advisory opinion, then the requestor may not rely on that
conclusion as support for its proposed activity. Any person involved in any specific
transaction or activity which is indistinguishable in all its material aspects from the
transaction or activity with respect to which this advisory opinion is rendered may rely on
this advisory opinion. See 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
conclusions in this advisory opinion may be affected by subsequent developments in the

---

2 See www.vagreenparty.org (last visited January 10, 2013).
law including, but not limited to, statutes, regulations, advisory opinions, and case law.

The cited advisory opinions are available on the Commission’s website, or directly from the Commission’s Advisory Opinion searchable database at http://www.fec.gov/searchao.

On behalf of the Commission,

Ellen L. Weintraub
Chair