



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA ITEM

For Meeting of 4-25-13

SUBMITTED LATE

April 25, 2013

MEMORANDUM

TO: The Commission

FROM: Anthony Herman *AH by AN*
General Counsel

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Subject: AO 2012-38 (Socialist Workers Party) – Draft C

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Attached is a proposed draft of the subject advisory opinion.

Members of the public may attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2012-38

2
3 Michael Krinsky, Esq.
4 Lindsey Frank, Esq.
5 Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.
6 45 Broadway, Suite 1700
7 New York, NY 10006-3791

DRAFT C

8
9 Dear Messrs. Krinsky and Frank:

10 We are responding to your advisory opinion request, on behalf of the Socialist Workers
11 Party, the Socialist Workers National Campaign Committee, other Socialist Workers Party
12 committees, and authorized committees of Federal candidates of the Socialist Workers Party
13 (collectively the “SWP” or the “SWP committees”), concerning the application of the Federal
14 Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to the
15 continuation of a partial reporting exemption for the SWP. The facts presented in this advisory
16 opinion are based on your letter received on November 8, your email received on November 30,
17 2012, your comment filed on April 18, 2013, as well as publicly available materials.

18 Based on the long history of systematic harassment of the SWP, including evidence of
19 some harassment after 2009, the Commission is renewing the partial reporting exemption until
20 December 31, 2016.

21 **Background**

22 *A. Partial Exemption History*

23 The SWP was first granted a partial reporting exemption in a consent decree that resolved
24 *Socialist Workers 1974 National Campaign Committee v. Federal Election Commission*, Civil
25 Action No. 74-1338 (D.D.C. 1979). In that case, the SWP alleged that certain disclosure
26 provisions of the Act deprived the SWP and its supporters of their First Amendment rights
27 because of the likelihood of harassment resulting from mandatory disclosure of contributors and

1 vendors. Additionally, the SWP alleged that the governmental interest in obtaining identifying
2 information of contributors and recipients of expenditures was diminished because, as a minor
3 party, the possibility of an SWP candidate winning or influencing an election was remote. The
4 consent decree exempted the SWP from the Act's requirements to disclose: 1) the names,
5 addresses, occupations, and principal places of business of contributors to the SWP committees;
6 2) other political committees or candidates to which or to whom the SWP committees made
7 contributions; 3) lenders, endorsers, or guarantors of loans to the SWP committees; and 4)
8 persons to whom the SWP committees made expenditures. The consent decree, however,
9 required the SWP to maintain records in accordance with the Act and to file reports in a timely
10 manner. On July 24, 1985, the court approved an updated settlement agreement with these
11 requirements and a partial reporting exemption.¹

12 In 1990, the SWP sought an extension of the partial reporting exemption through the
13 advisory opinion process in lieu of obtaining a consent decree approved by the court. The
14 Commission granted the same exemption provided by the previous consent decrees. The
15 advisory opinion provided that the exemption would be in effect through December 31, 1996.
16 *See* Advisory Opinion 1990-13 (SWP).

17 In response to the SWP's subsequent 1996, 2002, and 2008 requests, the Commission
18 again issued advisory opinions renewing these partial reporting exemptions. *See* Advisory
19 Opinion 1996-46 (SWP); Advisory Opinion 2003-02 (SWP); Advisory Opinion 2009-01 (SWP).

¹ The 1985 agreement also exempted the SWP from reporting the identification of persons providing rebates, refunds or other offsets to operating expenditures, and persons providing any dividend, interest, or other receipt.

1 The current exemptions apply to reports covering committee activity up to December 31, 2012.²

2 *See* Advisory Opinion 2009-01 (SWP).

3 B. *Factual Update*

4 1. Electoral Success

5 Despite proffering a presidential candidate in every election since 1948 and numerous
6 other candidates for Federal, State and local offices, no SWP candidate has ever been elected to
7 public office in a partisan election. Data from elections in 2009-2012 show very low vote totals
8 for SWP presidential and other Federal candidates. The information presented, as well as
9 publicly available information, shows that no SWP candidate has come close to winning a
10 Federal election in the three years since the last exemption was granted. SWP candidates for
11 President received only 10,791 votes in 2004, 9,827 votes (not including write-ins) in 2008, and
12 3,509 votes in 2012. Further, in 2010 and 2011, none of the three SWP candidates on the ballot
13 for U.S House of Representatives received more than 6,300 votes. The SWP has not had any
14 candidates on the ballot for the U.S. Senate since 2009. Further, no SWP candidate won a state
15 or local election during the three-year period. *See* Declaration of Chris Hoepfner, Exhibit D, at
16 1, 4-5 and Supplement to the Request.

17 2. Financial Activity

18 Information presented in the request and available on the Commission's website indicates
19 a very low level of financial activity by SWP political committees. As of October 20, 2012, the
20 date of the Declaration submitted by the SWP, only 118 people made contributions to the SWP

² Advisory Opinion 2009-01(SWP) specified that no later than 60 days prior to that date, the SWP could submit a new advisory opinion request seeking another renewal of the partial exemption. On October 31, 2012, the Commission granted an extension of the deadline for applying for a renewal of the partial reporting exemption to November 9 due to difficulties SWP counsel experienced in the wake of Hurricane Sandy. A complete Advisory Opinion Request was received on November 8, 2012.

1 National Committee in 2012, and, in 2008, only 243 people contributed to the Committee. *See*
2 Declaration of Lea Sherman, Exhibit E, at 1. Commission records reflect that no person
3 contributed over \$200 per calendar year to the Committee during the three-year period from
4 2009 to 2011. Year-end reports filed with the Commission indicate that the SWP received
5 contributions totaling \$1,222 from 2009 to 2011, and the Committee's last report shows that it
6 had 11 contributors each giving in excess of \$200 in 2012, when the Committee raised
7 approximately \$16,087 in total contributions. The SWP has not received any "bundled"
8 contributions that would require disclosure under the Honest Leadership and Open Government
9 Act (2 U.S.C. 434(i)), and it does not foresee receiving any such contributions. *See* Declaration
10 of Lea Sherman, Exhibit E, at 1.

11 Unlike committees of other minor parties, the SWP National Campaign Committee has
12 never applied or qualified for national committee status. *See* 2 U.S.C 431(14), 11 CFR 100.13;
13 *cf.* Advisory Opinion 2001-13 (Green Party of the United States); Advisory Opinion 1998-2
14 (Reform Party USA); Advisory Opinion 1995-16 (U.S. Taxpayers Party). According to
15 Commission records, no SWP party committee other than the National Campaign Committee
16 was registered with the Commission during the 2008 and 2010 election cycles and only two
17 other SWP party committees, both State committees, were registered during the 2004 cycle.
18 During the 2012 election cycle, no authorized committee of any SWP candidate was registered
19 with the Commission.

20

1
2 3. Harassment

3 The SWP's current request includes 57 exhibits attesting to some 45 incidents of
4 harassment or intimidation and 12 instances where potential SWP supporters were fearful. Each
5 of the 57 exhibits includes at least one sworn statement from an individual associated with the
6 SWP, sometimes accompanied by news accounts, correspondence received, or other materials.
7 Additionally, the exhibits to the SWP's April 18, 2013, comments describe 13 further incidents
8 of harassment or intimidation and fear, as well as one further explanation an instance of alleged
9 government surveillance submitted in the SWP's original request.

10 The statements were made by SWP members, candidates, campaign workers, or
11 supporters from different regions of the United States and generally fall into five categories: (1)
12 statements attesting to the fear that potential SWP supporters have of being identified as an SWP
13 supporter; (2) statements attesting to firings and alleged workplace intimidation; (3) statements
14 and materials attesting to alleged hostility from private parties to SWP activities; (4) statements
15 and materials attesting to alleged hostility from local government law enforcement sources to
16 SWP activities; and (5) a statement attesting to other alleged governmental information gathering
17 and sharing.³ The requestor states that this compilation of incidents "is not meant to be

³ The SWP's April 18, 2013, comments contain the following additional statements relating to the five categories described above: (1) two declarations from previous contributors, stating that if their identification must be disclosed for any further contributions, they may no longer contribute to the SWP (*see* Exhibits 58 and 59); (2) a declaration by the editor of *The Militant* newspaper, which has offered editorial endorsement to SWP candidates, describing five incidents in which persons who, having been accurately quoted in the newspaper, requested that their names be removed from the paper's on-line edition after experiencing difficulty in getting or maintaining employment after employers saw their quotes (*see* Exhibit 62); (3) two declarations describing incidents of alleged hostility from private parties to SWP activities and a declaration from the editor of *The Militant* describing examples of threatening mail, phone calls, and e-mail received by the paper (*see* Exhibits 60 and 61); (4) two declarations from SWP candidates who took part protests and picket lines sponsored by other organizations, which were later found to have been under surveillance by local and/or federal law enforcement agencies (*see* Exhibits 63 and 64); and (5) a further explanation of a prior statement regarding other alleged governmental information gathering and

1 exhaustive, as acts of intimidation and harassment against the SWP and its supporters are
2 frequent enough that they often go unreported to any central body.”

3 a. Historical and Current Government Harassment Causing Fears Among
4 Potential SWP Supporters

5 In its request, the SWP summarizes the history of harassment and disruption by
6 government entities that lasted through the 1970s, and that was the subject of lawsuits as late as
7 the 1980’s.⁴ Additionally, the SWP cites recent changes to certain government guidelines and
8 programs for obtaining and maintaining information on U.S. citizens and residents to support the
9 reasonableness of the fear expressed by several potential supporters.⁵

10 The SWP argues that, along with the lengthy history of governmental harassment and
11 disruption that ended prior to 1990, these recent changes and reported increases in government
12 surveillance could cause any person interested in supporting the SWP to reasonably fear that
13 association with the SWP may well subject them to government surveillance and harassment.
14 The SWP, however, does not present evidence that the SWP has been under surveillance under

sharing (see Exhibit 66).

⁴ Advisory Opinion 1990-13 (SWP) described FBI investigative activities between 1941 and 1976 that included the extensive use of informants to gather information on SWP activities and on the personal lives of SWP members, warrantless electronic surveillance, surreptitious entry of SWP offices, other disruptive activities including attempts to embarrass SWP candidates and to foment strife within the SWP and between the SWP and others, and frequent interviews of employers and landlords of SWP members. The description of these activities was set out in the Final Report of the Special Master Judge Breitel in *Socialist Workers Party v. Attorney General*, 73 Civ. 3160 (TPG) (S.D.N.Y., Feb. 4, 1980) and *Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357 (S.D.N.Y., 1986); see also Advisory Opinion 2003-02 (SWP), n.8, for a description of FBI activities between 1941 and 1976.

⁵ Specifically, the SWP points to alleged relaxation in FBI guidelines concerning investigations and information gathering relating to threats to national security; increased Federal support for, and involvement in, State and local “fusion centers,” described as “a collaborative effort of 2 or more Federal, State, local or tribal government agencies that combines resources, expertise, or information with the goal of maximizing the ability of such agencies to detect, prevent, investigate, apprehend and respond to criminal or terrorist activity”; and an increase in government surveillance of telephone and electronic communications. Exhibits I, M.

1 any of these programs.

2 The SWP's request contains approximately 12 statements by SWP candidates and
3 campaign workers relating to the concerns expressed by potential SWP supporters regarding
4 public identification with the SWP. These include statements by campaign supporters and
5 workers describing their experiences while campaigning and talking with potential supporters,
6 selling subscriptions to the SWP's periodical, *The Militant*, and working to get petition
7 signatures and electors. Individuals have expressed fear that getting involved or placing their
8 names and addresses on subscription lists would result in further scrutiny of them by
9 governmental authorities such as the FBI, the Department of Homeland Security, the Department
10 of Housing and Urban Development (fear of losing housing), and immigration authorities (when
11 applying for citizenship and even when they were legal residents). In addition some supporters
12 were fearful of being placed on a "government list." *See Exhibits 46-57.*

13 **b. Interactions With Other Governmental Authorities**

14 In addition to the generalized fear of increased government surveillance discussed above,
15 the SWP raises a specific incident of what it believes is "FBI Surveillance and Information
16 Sharing." The incident occurred when the SWP candidate for Vice President was stopped and
17 questioned for over two hours by Canadian immigration authorities. The candidate states that,
18 within seconds of scanning her passport, the Canadian immigration officer was able to review on
19 her computer a "sizeable dossier" concerning the candidate and her prior activities. The SWP
20 asserts that the only possible explanation for this is that the U.S. government has been gathering
21 information and monitoring the SWP and its members and sharing this information with the
22 government of Canada, and possibly other countries. *See Request Exhibits R, 15; SWP*

1 Comment Exhibit 66.

2 c. Firings and Alleged Workplace Intimidation

3 The request includes declarations of two SWP candidates and one supporter state that
4 their employment was terminated or that they were laid off and not rehired due to their SWP
5 candidacies and activities. One candidate states that he was fired because of ““conversations””
6 and ““discussions”” the employee was ““having with other employees”” concerning his
7 candidacy and the SWP ticket. *See* Exhibit 4 (quoting his employer). The other candidate states
8 that she was fired in 2010 despite her good work reports. She also states that she was laid off
9 from a different job with other workers during a 2009 work slowdown, but unlike other workers
10 was not rehired. *See* Exhibit 1. Finally, a supporter states that he was fired after going to an
11 establishment frequented by company managers to attend a farewell party for a fellow employee
12 who was an SWP candidate. *See* Exhibit 3.

13 Other exhibits report instances in which SWP candidates and supporters were subjected
14 to negative actions and abusive behavior by employers and co-workers. In each of these
15 instances, the requestor raises doubts as to the expressed bases for the firings or other adverse
16 employment actions and raises the possibility that the employee may, in fact, have been
17 terminated or otherwise penalized for SWP-related activities.

18 d. Hostility from private parties

19 The SWP submitted approximately 22 exhibits consisting of attestations as to incidents of
20 harassment, threats, or violence by private individuals or businesses. Many of these exhibits are
21 described below.

1 Two exhibits describe face-to-face threats of harm or violence made against SWP
2 workers, property, or materials. According to one exhibit, a person grabbed the clipboard of an
3 SWP supporter collecting signatures on a petition and said that he and his friends would “take
4 care of you,” and then followed the supporters to their car. The SWP supporters believed that
5 they would be “subjected to physical assault” if they did not leave. According to the second
6 exhibit, a man shook the locked SWP headquarters door during an organization meeting and
7 yelled, “If Obama wins I’m going to kill every one of you commie [expletive].” *See Exhibits 11*
8 *- 12.*

9 Two other exhibits allege threatening or hostile statements made by mail or by phone.⁶
10 One phone message threatened to shoot the “president of the campaign” unless he left town
11 immediately, while another stated that “We’re going to shut you down.” *See Exhibits 10, 13.*

12 Seventeen exhibits describe disruption of SWP workers or candidates while they were
13 distributing SWP literature or attempting to obtain ballot petition signatures. According to the
14 descriptions of some of these incidents, personnel of nearby businesses, including company or
15 store security officers, required SWP campaigners to dismantle or move their tables displaying
16 campaign literature and other party materials or to cease distribution of SWP materials while
17 standing in a certain area. According to the exhibits, these incidents often occurred when the
18 table or the campaigner was not on company premises, but only nearby, or in shopping mall
19 parking lots. The exhibits indicate that, in some cases, company personnel threatened to call the
20 local police, and one individual threatened that the FBI was on the way. *See Exhibits 29 – 45.*

⁶ In a third exhibit, a pro-choice SWP candidate for local office stated that she received at her residence a postcard containing a graphic anti-abortion message. Although the exhibit says that the candidate made the statement in support of SWP’s request for the exemption, there is no allegation that the statement was because the candidate represents the SWP, rather than her position as a pro-choice candidate. Exhibit 14.

1 e. Relations with local law enforcement authorities

2 The SWP's request also provides 13 exhibits describing interactions between SWP
3 workers and local law enforcement authorities in seven cities or towns. These often involved
4 police personnel or security police at public institutions who, according to the descriptions in the
5 exhibits, demanded or forced SWP campaigners to remove tables displaying campaign materials
6 and other SWP literature from sidewalks or to cease hand distribution of such materials. Some
7 of the described interactions involved questions as to the content of the literature being displayed
8 or distributed or what appeared to be hostile statements or actions by the police that may have
9 intimidated campaigners and others interested in SWP literature. *See* Exhibits 16 – 28.

10 For example, after looking through the campaign literature, police officers in
11 Philadelphia, Pennsylvania purportedly warned the SWP workers that “We can put you on the
12 no-fly list. Report you to Homeland Security.” The police officers temporarily took the
13 workers' identification cards, remained parked, and watched until the workers ended their
14 campaigning.

15 In some of the situations described, police officers contended that the SWP campaigners
16 needed permits to have a table on the sidewalks or to distribute literature. The SWP asserts,
17 however, that in six of these seven cities or towns, local ordinances did not require a permit and
18 the SWP campaigners' activities were lawful. The SWP further states that in the one city that
19 did have an ordinance requiring a permit to distribute political materials, the police officers'
20 actions reveal “anti-SWP animus in the selective application of these code provisions.” *See*
21 Exhibits 16 - 28; *see also* Exhibits T - Y (relevant policies and ordinances.) Four of the incidents
22 involving local police resulted in a ticket or summons being issued to SWP workers.

1 **Question Presented**

2 *Do the SWP, the Socialist Workers National Campaign Committee, other SWP party*
3 *committees, and authorized committees of candidates of the SWP qualify for an extension of their*
4 *previous partial reporting exemption?*

5 **I. Legal Analysis and Conclusions**

6 Yes, the SWP, the Socialist Workers National Campaign Committee, other SWP party
7 committees, and authorized committees of candidates of the SWP qualify for an extension of
8 their partial reporting exemption for reports covering activity up to December 31, 2016.

9 The Act requires political committees to file reports with the Commission that identify
10 individuals and other persons who make contributions over \$200 during the calendar year or
11 election cycle (depending on the type of committee), or who come within various other
12 disclosure categories. 2 U.S.C. 434(b)(3), (5), (6); *see also* 2 U.S.C. 431(13). The Supreme
13 Court has found that under certain circumstances, the Act's disclosure requirements are
14 unconstitutional as applied to a minor party because the threat to the exercise of First
15 Amendment rights resulting from disclosure outweighs the government's insubstantial interest
16 in disclosure by that particular entity. *Buckley v. Valeo*, 424 U.S. 1, 71-72 (1976). Reasoning
17 that "[m]inor parties must be allowed sufficient flexibility in the proof of injury to assure a fair
18 consideration of their claim" for a reporting exemption, the Court stated that "[t]he evidence
19 offered need show only a reasonable probability that the compelled disclosure of a party's
20 contributors' names will subject them to threats, harassment, or reprisals from either
21 Government officials or private parties." *Id.* at 74. "The proof may include, for example,
22 specific evidence of past or present harassment of members due to their associational ties, or of

1 harassment directed against the organization itself. A pattern of threats or specific
2 manifestations of public hostility may be sufficient.” *Id.* at 74;

3 In *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87 (1982), the
4 Supreme Court reaffirmed and applied the standard set forth in *Buckley* to grant the SWP an
5 exemption from state disclosure requirements, and clarified that the exemption recognized in
6 *Buckley* extended to the names of recipients of disbursements in addition to names of
7 contributors. *See also FEC v. Hall-Tyner Election Campaign Committee*, 678 F.2d 416, 421-22
8 (2d Cir. 1982), *cert. denied*, 459 U.S. 1145 (1983).⁷

9 Following this case law, the Commission must first determine whether the SWP
10 continues to maintain its status as a minor party. *See Buckley*, 424 U.S. at 68-74. Next, the
11 Commission must weigh three factors: (1) the history of violence or harassment, or threats of
12 violence or harassment, directed at the SWP or its supporters by governmental authorities,
13 including law enforcement agencies, or by private parties; (2) evidence of continuing violence,
14 harassment, or threats directed at the SWP or its supporters since the prior exemption was
15 granted; and, balanced against the first two factors, (3) the governmental interest in obtaining
16 identifying information of contributors and recipients of expenditures. The Commission has
17 decided previously that, where the impact of the activities of the SWP and its supporters on
18 Federal elections is minimal because the possibility of an SWP candidate winning an election is
19 remote, the government’s interest in obtaining such information is lessened. Advisory Opinion
20 2009-01 (SWP); *see also Hall-Tyner Election Campaign Comm.*, 678 F.2d at 422.

21 *A. Minor Party*

⁷ In discussing disclosure requirements for electioneering communications and possible exemptions to the Act’s disclosure requirements, the Court in *McConnell v. FEC*, 540 U.S. 93, 198-199 (2003) reiterated the standards set forth in *Buckley* and *Brown* that have formed the legal basis for past exemptions for the SWP.

1 As evidenced by the low vote totals for SWP candidates, the lack of success in ballot
2 access, and the small total amounts of contributions to SWP committees, the Commission
3 concludes that the SWP continues to be a minor party that is out of the mainstream. The SWP is
4 a “small and unpopular political party.” *McArthur v. Smith*, 716 F. Supp. 592, 593 (S.D. Fla.
5 1989); *cf. also ProtectMarriage.com v. Bowen*, 830 F. Supp. 2d 914, 928 (E.D. Cal. 2011); *FEC*
6 *v. Hall-Tyner Election Campaign Comm.*, 678 F.2d at 420 (2d Cir. 1982).

7 *B. History of Violence, Threats, and Harassment*

8 As explained above, there is a long history of threats, violence, and harassment against
9 the SWP and its supporters by Federal and local law enforcement agencies and private parties.
10 The Commission has consistently viewed the SWP’s requests for exemption from the Act’s
11 reporting requirements in light of this “long history of governmental harassment of the SWP.”
12 *See, e.g.*, Advisory Opinion 2009-01 (SWP). Courts have detailed this history. *See generally*
13 *Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357 (S.D.N.Y. 1986); *Socialist*
14 *Workers Party v. Attorney General*, 666 F. Supp. 621 (S.D.N.Y. 1987). The Supreme Court has
15 previously referred to ““the substantial evidence of both governmental and private hostility
16 toward and harassment of SWP members and supporters.”” *Brown v. Socialist Workers ’74*
17 *Campaign Committee (Ohio)*, 459 U.S. 87, 98-99 (1982) (quoting the underlying district court
18 opinion).

19 To be sure, the importance of the past history of harassment has diminished as those acts
20 and incidents recede further into the past. FBI surveillance of the SWP lasted for 25 years and
21 ended around 1976, nearly 40 years ago. *Brown*, 459 U.S. at 99. The SWP has provided the
22 Commission with accounts of serious incidents of harassment by private parties over the last

1 several decades, but those have declined over time. *See* Advisory Opinion 2009-01 (Socialist
2 Workers Party) (describing the alleged incidents of violence and harassment from 2003-2008 as
3 “appear[ing] to be of lesser magnitude than those referenced in court opinions and prior AOs
4 granting the exemption”).

5 But the governmental hostility and public and private harassment against the SWP was
6 pervasive and threatened the group’s existence for decades. It thus continues to provide support
7 for the SWP’s current request for a prospective partial reporting exemption. It is against this
8 historical backdrop that the present evidence presented by the requesters must be considered.
9 *Buckley*, 424 U.S. at 74.

10 *C. Recent Violence, Harassment, and Threats*

11 A review of the information presented in connection with this request indicates that the
12 SWP and persons associated with it have likely experienced harassment from private sources
13 from the end of 2009 to the present. Although some of the alleged incidents of harassment may
14 seem minor or subject to differing interpretations, there are a number of examples, such as
15 firings and instances of workplace intimidation, as well as verbal threats and harassment, that
16 legitimately raise concern by those associated with the SWP, particularly when such examples
17 are taken together.⁸ Considering that these incidents occurred over a three-year span, there are
18 relatively more of them on a per-year basis than incidents that took place during the six-year
19 period before the Commission when it rendered Advisory Opinion 2009-01 (Socialist Workers
20 Party).

⁸ Some of the SWP’s alleged incidents merely involve private parties expressing heated disagreement with the SWP’s positions. Such episodes are “typical of any controversial campaign,” and “do not necessarily rise to the level of ‘harassment’ or ‘reprisals.’” *ProtectMarriage.com*, 830 F. Supp. 2d at 934; *see also* Advisory Opinion 2009-01 (Socialist Workers Party) (noting that “insulting messages containing harsh language” are “not out of the ordinary experience of campaigns today”).

1 Of particular relevance in the SWP’s submissions now before the Commission is the
2 evidence of employment-related repercussions. For example, two SWP candidates were
3 temporary workers released from job placements in circumstances suggesting their party
4 membership may have played a role. *See* Exhibits 1, 4. Though not the exclusive reason given
5 for either firing, references to SWP activities were allegedly made by the employer at various
6 points. *See* Warshell Declaration ¶¶ 3-4, Exhibit 4 (stating that the employer had referred to off-
7 site , off-hours ““conversations, discussions you were having with employees”” about SWP
8 candidacy as a reason for the termination); Potash Declaration ¶ 1, Exhibit 1 (stating that one
9 management employee said he did not ““care if the employee was left or right”” and two
10 managers said the company ““will make a decision about you within two weeks”” following
11 publication of the candidate’s letter in a newspaper). The SWP alleges that there were at least
12 four terminations involving three SWP supporters in the last three-year period.

13 There are also allegations of continuing harassment and hostility by local police.
14 Although less frequent, the evidence presented suggests that harassment of the SWP by other
15 governmental entities since 1990 still occurs. Although “[it [wa]s not certain that animus against
16 the SWP was the motivating factor” in some situations when local police officers prevented
17 pamphlet distribution, Advisory Opinion 2009-01 (Socialist Workers Party), at 9, the SWP has
18 submitted evidence of two instances of alleged disparate treatment as between SWP workers and
19 the workers of other organizations undertaking the same activity nearby. *See* Exhibits 18 - 19.

20 In addition, the long history of Federal and local governmental harassment continues to
21 have some present-day chilling effect despite the absence of recent alleged Federal governmental
22 harassment. For example, a number of SWP personnel filed sworn statements that individuals

1 had been reluctant to sign petitions or subscribe to SWP literature for fear of scrutiny by
2 governmental authorities.

3 The evidence presented does not need to demonstrate to a certainty that harassment
4 would inexorably follow a revocation of the partial reporting exemption. There need be only “a
5 reasonable probability that compelled disclosure” would result in “threats, harassment, or
6 reprisals from either Government officials or private parties.” *Buckley*, 424 U.S. at 74. Based on
7 consideration of the evidence from 2009 through 2012, the Commission concludes that there is a
8 reasonable probability that SWP contributors and vendors doing business with the SWP and
9 committees supporting SWP candidates would face threats, harassment, or reprisals if their
10 names and indentifying information were disclosed.

11 *D. The Government’s Informational Interest*

12 As discussed above, the Commission must weigh against the danger of violence or
13 harassment, or threats of violence or harassment, directed at the SWP or its supporters the
14 governmental interest in obtaining identifying information of contributors and recipients of
15 expenditures. *See Brown*, 459 U.S. at 92.

16 The governmental interest in obtaining the names, addresses, and other identifying
17 information of SWP contributors and vendors doing business with the SWP committees in
18 connection with Federal elections remains very low and continues to be outweighed by the
19 reasonable probability of threats, harassment, or reprisals resulting from such disclosure. The
20 SWP has experienced a decline in episodes of harassment of serious magnitude, but has
21 submitted some credible evidence of threats and intimidation. When weighed together with the
22 very small amounts of money raised and the significant past history, the recent evidence of

1 harassment thus satisfies the requirement of demonstrating a reasonable probability of
2 harassment.

3 * * * * *

4 The Commission thus grants the SWP committees a further continuation of the partial
5 reporting exemption provided for in the consent agreements and continued in previous advisory
6 opinions. As required in previous advisory opinions, each of the SWP committees must assign a
7 code number to each individual or entity from whom or which it receives one or more
8 contributions aggregating in excess of \$200 in a calendar year or applicable election cycle
9 (depending upon the type of political committee).⁹ *See, e.g.*, Advisory Opinion 2009-01 (SWP).

10 The partial reporting exemption will apply to the following sections of the Act: 2 U.S.C.
11 434(b)(3) (receipts of a political committee); 434(b)(5) and (6) (expenditures and disbursements
12 by a political committee); 434(e) (reporting by political committees); 434(f) (electioneering
13 communication disclosure); and 434(g) (independent expenditure reporting).¹⁰ Please note that
14 the SWP and the committees supporting SWP candidates must still comply with all other

⁹ Each political committee entitled to the exemption must assign a code number to each individual or entity from whom it receives one or more contributions aggregating in excess of \$200 in a calendar year (if an unauthorized committee) or in excess of \$200 during the election cycle (if an authorized committee). That code number must be included in FEC reports filed by each committee in the same manner that full contributor identification would otherwise be disclosed. Consistent with the requirement that the committees comply with the recordkeeping provisions of the Act, the committee's records must correlate each code number with the name and other identifying data of the contributor who is represented by that code.

¹⁰ If an SWP committee does not qualify as a political committee and makes an electioneering communication that must be reported under 2 U.S.C. 434(f), it must disclose the name of the broadcasting station even though it would be exempt from disclosing names and addresses of donors and all other vendors. Additionally, the SWP's request concerns the granting of the partial exemption to both SWP party and candidate committees. The partial exemption does not extend to individual SWP supporters who, as individuals, engage in activity that might require them to file reports of their own, for example, the filing of reports of electioneering communications under 2 U.S.C. 434(f) and independent expenditures under 2 U.S.C. 434(g).

1 reporting obligations such as electronic filing and reporting their independent expenditures while
2 omitting the names and identifications of contributors, donors, and vendors.

3 In its request, the SWP also asks for exemptions from “any new, post-2008 reporting and
4 disclosure requirements that might otherwise be applicable.” Since the issuance of Advisory
5 Opinion 2003-02 (SWP), Congress has enacted the Honest Leadership and Open Government
6 Act of 2007 (“HLOGA”), which requires disclosure of the names, addresses, and employers of
7 lobbyists/registrants who provide bundled contributions in excess of \$15,000 (as indexed under 2
8 U.S.C. 441a(c)) to an authorized committee, leadership PAC, or party committee during a
9 reporting period. *See* 2 U.S.C. 434(i); 11 CFR 104.22. The SWP states that it has not received,
10 and does not anticipate receiving, any such bundled contributions that would require disclosure
11 but nevertheless requested an exemption from this requirement. In the absence of any indication
12 that contributions received by the SWP or committees supporting its candidates would be
13 bundled by lobbyists/registrants and would also reach the current \$16,000 threshold for
14 triggering the requirements of HLOGA, the Commission concludes that the SWP’s need for an
15 exemption from HLOGA’s requirements is hypothetical. *See* Advisory Opinion 2009-01 (SWP).

16 In sum, based on the record presented, the Commission grants this partial reporting
17 exemption to reports covering through December 31, 2016. *See* Advisory Opinion 2009-01
18 (explaining three-year extension). At least 60 days prior to December 31, 2016, the SWP may
19 submit a new advisory opinion request seeking a renewal of the exemption. If a request is
20 submitted, the Commission will consider the factual information then presented as to harassment
21 after December 31, 2012, or the lack thereof, in making a decision regarding renewal.

1 The Commission emphasizes that the SWP committees must comply with all of the
2 remaining requirements of the Act and Commission regulations. These committees must file
3 reports containing the information required by 2 U.S.C. 434(b) with the exception of the
4 information specifically exempted, and they must keep and maintain records as required under 2
5 U.S.C. 432 with sufficient accuracy so as to be able to provide information, otherwise exempt
6 from disclosure, in connection with a Commission investigation. In addition to complying with
7 the requirements of the consent decrees, the SWP committees must file all reports required under
8 2 U.S.C. 434(a) in a timely manner. The SWP committees must also comply with the provisions
9 of the Act governing the organization and registration of political committees. *See, e.g.,*
10 2 U.S.C. 432 - 433. Finally, the SWP committees must comply with the Act's contribution
11 limitations, prohibitions, and disclaimer provisions. 2 U.S.C. 441a - 441g, 441i.

12 This response constitutes an advisory opinion concerning the application of the Act and
13 Commission regulations to the specific transaction or activity set forth in your request. *See*
14 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or
15 assumptions presented, and such facts or assumptions are material to a conclusion presented in
16 this advisory opinion, then the requestor may not rely on that conclusion as support for its
17 proposed activity. Any person involved in any specific transaction or activity which is
18 indistinguishable in all its material aspects from the transaction or activity with respect to which
19 this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B).
20 Please note that the analysis or conclusions in this advisory opinion may be affected by
21 subsequent developments in the law, including, but not limited to, statutes, regulations, advisory

1 opinions, and case law. The cited advisory opinions are available on the Commission's website,
2 www.fec.gov, or directly from the Commission's Advisory Opinion searchable database at
3 <http://www.fec.gov/searchao>.

4 On behalf of the Commission,

5

6 Ellen L. Weintraub
7 Chair
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