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SECRETARIAT

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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

August 16, 2000

MEMORANDUM

**AGENDA ITEM**  
For Meeting of: 8-24-00

TO: The Commission

THROUGH: James A. Pehrson  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Michael G. Marinelli  
Staff Attorney

SUBJECT: Draft AO 2000-21

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for August 24, 2000.

Attachment

1  
2 **ADVISORY OPINION 2000-21**

3  
4 **John Ciampoli**  
5 **Gentile and Ciampoli**  
6 **220 Old Country Road**  
7 **Mineola, New York 11501**

**DRAFT**

8  
9 **Dear Mr. Ciampoli:**

10  
11 **This refers to your letter dated July 12, 2000, with enclosures, requesting an**  
12 **advisory opinion concerning the status of the State Committee of the New York State**  
13 **Conservative Party ("the Party") as a State committee of a political party under the**  
14 **Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission**  
15 **regulations.**

16 **Your request includes the Party rules ("the rules") which detail various aspects of**  
17 **the organization of the Party. The rules prescribe the manner in which the State**  
18 **Committee ("the Committee"), using several different subgroups such as its State**  
19 **executive committee, acts as the executive authority for the Party and chooses the Party**  
20 **officers.<sup>1</sup> The rules further detail the procedures for the endorsement and the recognition**  
21 **of county Party committees. The request includes several supporting documents: an**  
22 **affidavit of Michael R. Long, Chairman of the Party, an affidavit from Representative**  
23 **Vito J. Fossella, a former and current candidate of the Party, and an affidavit from**  
24 **officials of the New York State Board of Elections.**

25 **Under the Act and Commission regulations, the term "State committee" means the**  
26 **organization which, by virtue of the bylaws of a political party, is responsible for the day-**

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<sup>1</sup> **The Federal political committee registered by the Party is the New York State Conservative Party (formerly New Yorkers for a Conservative Majority) which first filed with the Commission in 1993.**

1 to-day operation of such political party at the State level, as determined by the  
2 Commission. 2 U.S.C. §431(15); 11 CFR 100.14. The definition of State committee also  
3 requires the existence of a political party. The term "political party" is defined under 2  
4 U.S.C. §431(16) and 11 CFR 100.15 as an association, committee, or organization which  
5 nominates a candidate for election to any Federal office whose name appears on the  
6 election ballot as the candidate of such association, committee, or organization.

7       The Commission has considered a variety of State party organizations in making  
8 these determinations. Advisory Opinions 2000-14, 1999-26, 1998-27, 1998-24, 1998-2,  
9 and 1997-29. In reviewing State party affiliates of entities that qualified as national  
10 committees of political parties under 2 U.S.C. §431(14), the Commission has looked to  
11 the existence of a State affiliate agreement which "delineates activities commensurate  
12 with the day-to-day operation of [a political party] on a State level," and then concluded  
13 that "[t]o the extent the relationship between [a political party] and an affiliate is based on  
14 this agreement and the affiliate displays evidence of activity by obtaining ballot access for  
15 both its Presidential and other Federal candidates, . . . [that] particular affiliate is a State  
16 Committee of the [political party]." Advisory Opinion 1998-24. The Commission has  
17 also granted State party committee status to organizations that were affiliated with  
18 national political parties which had not achieved national committee status. State  
19 committee status in these opinions was based on the existence of State bylaws detailing  
20 activities commensurate with the day-to-day operation of a party on the State level, and  
21 the placement of at least one Congressional candidate on the ballot. Advisory Opinions  
22 2000-14, 1998-27, 1998-23, 1997-29, and 1997-7. In reaching this conclusion, the  
23 Commission made clear that a State political party could qualify as a State committee

1 without an affiliation with any national political party organization and indicated that a  
2 State party's candidate must be a candidate under 2 U.S.C. §431(2) in order for that party  
3 to satisfy the second requirement.<sup>2</sup> Advisory Opinions 2000-14, 1998-27 and 1998-23;  
4 see also Advisory Opinion 1976-95. The Commission has also granted State committee  
5 status to a State affiliate of a qualified national party committee where its only Federal  
6 candidates, as defined under the Act, were the Presidential and Vice Presidential  
7 candidates of the national party. Advisory Opinion 1997-3.

8 As noted above, the Party's rules set out a comprehensive organizational structure  
9 for the Party from the statewide level down through various local levels, and they clearly  
10 identify the role of the Committee. Party rules, articles II, IV, and VII. As they delineate  
11 activity commensurate with the day-to-day functions and operations of a political party on  
12 a State level, the rules are consistent with the State party rules reviewed in previous  
13 situations where the Commission has affirmed the State committee status of a political  
14 organization. See Advisory Opinions 2000-14, 1999-26, and 1998-27. Again, the fact  
15 that the Party is not affiliated with a recognized national committee, or other national  
16 political party organization, does not prevent its recognition as a State committee of a  
17 political party. See Advisory Opinions 2000-14 and 1976-95.<sup>3</sup> Therefore, the  
18 Commission concludes that the Party meets the first element.

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<sup>2</sup> An individual becomes a candidate for purposes of the Act if he or she receives contributions aggregating in excess of \$5,000, or makes expenditures in excess of \$5,000. 2 U.S.C. §431(2). Federal candidates must designate a principal campaign committee within 15 days after qualifying as a candidate, and the committee also becomes subject to various registration, recordkeeping, and reporting requirements. 2 U.S.C. §§432(e)(1), 433, and 434(a); 11 CFR 101.1, 102.1, and 104.1.

<sup>3</sup> The first non-major State party committee recognized by the Commission was the Liberal Party of New York in Advisory Opinion 1976-95. The most recent non-major State party committee to be recognized as a State committee of a political party was the Working Families Party of New York in Advisory Opinion 2000-14.

1           As indicated above, the second element for qualifying as a State committee of a  
2 political party, and an essential element for qualifying as a political party, is that the party  
3 organization actually obtains ballot access for its Federal candidates, as defined in the  
4 Act. The Federal candidate identified in your request, Representative Vito Fossella, was  
5 nominated by the Conservative Party in 1998 and received the Conservative party line on  
6 the New York State ballot in the 1998 U.S. House of Representatives election in the 13<sup>th</sup>  
7 Congressional District of New York. He has also been re-nominated by the Party and  
8 will again have the Party's line in the upcoming 2000 election. This candidate also  
9 registered his principal campaign committee and filed disclosure reports with the  
10 Commission. Further, the reports filed by Mr. Fossella's committee indicate that his  
11 1998 Congressional campaign received or expended in excess of \$5,000, and it has also  
12 done so in the current 2000 campaign. Accordingly, the candidate meets the  
13 requirements of 2 U.S.C. §431(2).<sup>4</sup> The affidavit provided by Mr. Fossella indicates his  
14 support of the Party's request for State Committee status. Accordingly, the Commission  
15 concludes that Mr. Fossella's candidate status is relevant to the Party's claim for State  
16 committee status, and the Party therefore meets the second element.

17           In view of the fact that both elements discussed in this opinion have been  
18 satisfied, the Commission concludes that the Committee qualifies as the State committee  
19 of a political party under the Act and Commission regulations.

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<sup>4</sup> Mr. Fossella was a "fusion" candidate in 1998 in that he also received the nomination of the New York State Republican Party. He is again seeking the New York State Republican Party nomination for the 2000 election. In past opinions, the Commission has concluded that "fusion candidates may be considered when reviewing a party's qualification for national committee status." See Advisory Opinions 2000-14 and 1998-2.

