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AOR 2003-02

February 13, 2003

Federal Election Commission  
Office of General Counsel  
999 E Street, N.W.  
Washington, DC 20463

Dear Commissioners:

On behalf our clients, the Socialist Workers Party (hereinafter "SWP"), the Socialist Workers National Campaign Committee, and committees supporting candidates of the SWP, we submitted on October 30, 2002 a request for an advisory opinion pursuant to 2 U.S.C. § 437(f) and 11 C.F.R. § 112.1 that the SWP and the committees supporting candidates of the Socialist Workers Party continue to be exempt from certain reporting and disclosure provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, *et seq.* ("FECA" or the "Act"). That request contained evidence of 74 incidents of harassment or intimidation of SWP supporters from across the country.

As discussed with the Federal Election Commission's Office of General Counsel, we hereby supplement that request by providing additional supporting evidence for several of the incidents

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COUNSEL

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described in our previous filing. This supplemental evidence consists of police reports, photographs, contemporaneous notes, articles from periodicals, and SWP campaign notices. They are attached as exhibits hereto. The numeration of these exhibits of supplemental evidence corresponds to the numeration of the exhibits in our original filing.

The supplemental evidence is briefly summarized below, arranged in paragraphs that correspond to the numeration in the accompanying volume of exhibits.

5. In August 2002, during a public petition drive by the SWP, a series of break-ins occurred at SWP headquarters in Washington, D.C. Supplemental evidence: incident reports prepared by local police; entries in *Washington Post* "District Crime Watch" section; two SWP flyers describing incidents; article from *The Militant*.
12. In February 2002, a break-in occurred at the SWP campaign office in Houston, Texas. Supplemental evidence: Houston Police Department offense report describing break-in at the Pathfinder Bookstore, which shares the location with the SWP campaign office; photograph of destroyed scanner; SWP announcement of news conference; SWP press release.
16. In October 2001, an SWP mayoral candidate distributing literature at a literature table in Saint Paul, Minnesota was threatened with a citation. Supplemental evidence: copy of letter dated October 10, 2001, from St. Paul Department of Public Works Ordinance Enforcement Division, noting that "failure to comply may result in a citation," and providing name of Mike Cassidy as inspector. Previously-provided declaration (Exhibit 16 to SWP's October 30, 2002 AO Request) stated that incident took place on October 10, 2001, and listed Mike Cassidy as investigating officer.
24. In July 2001, local police officers in Brooklyn, New York charged SWP supporters at a

literature table with disorderly conduct and unlicensed vending. Supplemental evidence: papers from ensuing legal proceedings—notice of motion; affirmation of attorney representing SWP supporter; copies of summonses; memorandum of law in support of SWP supporter's motion to dismiss summonses.

30. In September 2000, someone defaced a picture of an SWP candidate on the door of a dorm room in Pittsburgh, Pennsylvania. KKK slogans were also written on the door. Supplemental evidence: article from *The Militant*.

40. In May 2000, SWP supporters were instructed by local police officer to stop selling *The Militant* newspaper in Pennsylvania. Supplemental evidence, pertaining to similar incident, where in May 2002 additional SWP supporters distributing *The Militant* in Pennsylvania were confronted by a local police officer, then brought in a police car to a police station, where they were issued citations and told to appear in court: declaration of SWP supporter; letter from SWP supporters' attorney requesting withdrawal of citations; copy of Notice of Withdrawal of Charges.

46. In May 1999, SWP supporters were threatened with violence in Des Moines, Iowa. Supplemental evidence: Case Investigation Report from Des Moines, Iowa Police Department; Des Moines Police Supplemental Report; contemporaneous notes from SWP supporter.

48. In April 1999, SWP supporters were threatened with arrest for campaigning near the Peabody Coal Company in Morgansfield, Kentucky. Supplemental evidence: photographs of SWP supporters campaigning that day on the road outside the fenced-in Peabody Coal Camp #1. Although the photographs do not depict the law enforcement officers, they corroborate the

previously-provided declaration in that they show SWP supporters were campaigning near the coal camp.

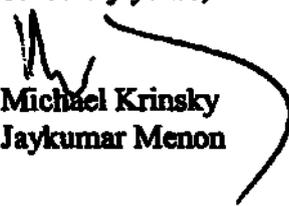
58. In February 1998, Federal Protective Service officers stand near SWP supporters protesting U.S. policy towards Iraq in front of Federal Building in Birmingham, Alabama and take individual close-up photographs of their faces. Supplemental evidence: photographs of officer holding camera, taking photographs; photographs of other officers present in front of Federal Building that day.
62. In September 1997, an SWP candidate was intimidated by his employers at Boeing after a radio appearance in which he discussed his political views. Supplemental evidence: article by the SWP candidate in *The Seattle Times* newspaper; SWP flyer (fourth paragraph from bottom).
63. In September 1997, SWP supporters were cursed at and threatened by a local police officer in Chelsea, Massachusetts. Supplemental evidence: article from *The Militant*; SWP fact sheet describing incident; SWP flyer/campaign statement describing incident.

### CONCLUSION

Based on the foregoing, and on our filing dated October 30, 2002, there is a reasonable probability that the compelled disclosure of the Socialist Workers Party's contributions and recipients will subject them to threats, harassment or reprisals from private citizens or various branches of the government. The factual showing made here evidencing continued harassment along with the continuing impact of the long history of governmental harassment is in all respects comparable to the showing that was made in 1996. The SWP has again demonstrated that there is a reasonable

probability that they will be subject to threats, harassment, or reprisals from governmental or private sources unless its campaign committees are granted a renewal of the exemption granted in the 1996 advisory opinion and that under the First Amendment, the SWP and its campaign committees cannot be compelled to disclose information concerning their contributors or recipients.

Sincerely yours,



Michael Krinsky  
Jaykumar Menon

**EXHIBITS SUBMITTED IN SUPPORT OF SUPPLEMENT TO 2002 REQUEST  
BY THE SOCIALIST WORKERS PARTY, THE SOCIALIST WORKERS PARTY  
NATIONAL CAMPAIGN COMMITTEE, AND COMMITTEES SUPPORTING  
CANDIDATES OF THE SOCIALIST WORKERS PARTY  
FOR AN ADVISORY OPINION**

**RABINOWITZ, BOUDIN, STANDARD,  
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*Attorneys for Requesting Parties*

**THE OFFICE OF GENERAL COUNSEL HAS INCORPORATED THE  
DOUCMENTS SUBMITTED BY THE REQUESTER WITH THE FEBRUARY 13, 2003,  
LETTER INTO THE CORRESPONDING EXHIBITS TO THE OCTOBER 30, 2002,  
LETTER.**

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October 30, 2002

Federal Election Commission  
Office of General Counsel  
999 E Street, N.W.  
Washington, DC 20463

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COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2002 OCT 31 P 2:59

Dear Commissioners:

On behalf our clients, the Socialist Workers Party (hereinafter "SWP"), the Socialist Workers National Campaign Committee, and committees supporting candidates of the SWP, we hereby request an advisory opinion pursuant to 2 U.S.C. § 437(f) and 11 C.F.R. § 112.1 that the SWP and the committees supporting candidates of the Socialist Workers Party continue to be exempt from certain reporting and disclosure provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, *et seq.* ("FECA" or the "Act"). In its 1996 Advisory Opinion, 1996-46 (hereinafter "1996 Opinion" or "AO" or "1996 AO"), the Federal Election Commission (the "FEC" or "Commission") granted exemptions to the SWP's campaign committees from the FECA's provisions requiring, *inter alia*, disclosure of the names and residential addresses, occupations, and employers of contributors to SWP committees (§ 434(b)(3)(A)); political, authorized, or affiliated

committees making contributions or transfers to the reporting committee (§ 434(b)(3)(B), (C), (D)); lenders, guarantors, or endorsers of loans to the reporting committee (§ 434(b)(3)(E)); persons providing rebates, refunds, or other offsets to operating expenditures to the reporting committee (§ 434(b)(3)(F)); persons providing any dividend, interest, or other receipt to the reporting committee (§ 434(b)(3)(G)); and persons to whom expenditures or committees to which expenditures, disbursements, or loans have been made (§ 434(b)(5),(6)). Copies of the Commission's 1996 Advisory Opinion (downloaded from the FEC web site) and its 1990 Advisory Opinion (hereinafter, "1990 Opinion") are attached as Exhibits A and B, respectively, to this letter request.

**I. Applicable Law and Prior Determinations**

**A. Date When Advisory Opinion Request Must Be Filed**

The 1996 Opinion granted exemptions to the SWP through December 31, 2002. *AO*

at 9. It further provided that:

*[a]t least sixty days prior to December 31, 2002, the SWP may submit a new advisory opinion request seeking a renewal of the exemption. If a request is submitted, the Commission will consider the factual information then presented as to harassment after 1996, or the lack thereof and will make a decision at that time as to the renewal.*

*Id.* (emphasis added).

Accordingly, the advisory opinion request seeking a renewal of the exemption must be filed by November 1, 2002, and this request is timely filed.

**B. FEC's Advisory Opinions Concerning The SWP.**

An exemption from FECA reporting requirements for the SWP was first provided under a 1979 consent decree, which resolved *Socialist Workers 1974 National Campaign Committee v. Federal Election Commission*, Civ. A. No. 74-1338 (D.D.C.), and which "exempted the committees from the provisions requiring the disclosure of the names, addresses, occupations, and principal places of business of contributors to SWP committees; of political committees or candidates supported by SWP committees; of lenders, endorsers or guarantors of loans to SWP committees; and of persons to whom the SWP committees made expenditures." *AO* at 1.

The exemptions were renewed in an updated settlement agreement approved by the court on July 24, 1985, and in an advisory opinion issued by the Commission in 1990. The 1990 advisory opinion "granted the same exemption provided for in the previous consent decrees," *1996 AO* at 2, as did the 1996 Opinion. *1996 AO* at 9 ("[t]he Commission...grants the committees supporting the candidates of the SWP the exemption provided for in the consent agreements and in Advisory Opinion 1990-13.") Specifically, the SWP was exempted from filing "[r]eports that identify individuals and other persons who make contributions over \$200, or who come within various other disclosure categories listed above in reference to the consent agreements." *1996 AO* at 2, citing 2 U.S.C. §§ 434(b)(3), 434(b)(5), and 434(b)(6).

One new requirement, however, imposed by the 1996 Opinion was that "each committee entitled to the exemption should assign a code number to each individual or entity from whom it receives in aggregate in excess of \$200 in a calendar year" and should include that code number in its FEC filings. AO at 10.

### C. Constitutional Underpinnings And Their Application To The SWP By The Courts

In its 1996 Opinion, the Commission found that, upon the factual record presented, exemption from the reporting and disclosure requirements of the Act was constitutionally required under the Supreme Court's decisions in *Buckley v. Valeo*, 424 U.S. 1 (1976) and *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87 (1982). The Commission recognized that "under certain circumstances, the Act's disclosure requirements as applied to a minor party would be unconstitutional because the threat to the exercise of First Amendment rights resulting from disclosure would outweigh the insubstantial interest in disclosure by that entity." AO at 2. The Commission considered various incidents demonstrating continuing harassment of the SWP, its members, and affiliates, and recognized the long history of governmental harassment beginning in 1941 with the FBI's generalized investigation of the SWP that continued unabated for 35 years. Applying the constitutional principles contained in *Buckley* and *Socialist Workers* to the factual showing made, the Commission in 1996 granted the SWP an exemption from the disclosure requirements of the Act.

The fundamental constitutional principle recognized in *Buckley v. Valeo* and *Brown v. Socialist Workers '74 Campaign Committee* that the "First Amendment prohibits a State from compelling disclosure by a minor party that will subject those persons identified to the reasonable probability of threats, harassment, or reprisals," *Socialist Workers*, 459 U.S. at 101, is well established.

In *Buckley*, the Supreme Court recognized that the requirements of the Federal Election Campaign Act as applied to minor parties and independent candidates in particular may under certain circumstances be unconstitutional because of the danger of significant infringement of First Amendment rights. *Id.* at 71. The Court recognized that "the governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election." *Id.* at 70. Additionally, the Court noted that minor parties are unlike the major political parties because they "usually represent definite and publicized viewpoints, [thus] there may be less need to inform the voters of the interests that specific candidates represent." *Id.*

The Court, while refusing to endorse a blanket exemption for all minor parties, held that particular minor parties might present circumstances similar "to those before the Court in *NAACP v. Alabama* [357 U.S. 449 (1958)] and *Bates [v. Little Rock, 361 U.S. 516 (1960)]*, where the threat to the exercise of First Amendment rights is so serious and the state interest so insubstantial that the Act's requirements cannot be constitutionally applied."

*Buckley*, 424 U.S. at 71. As an illustration of such a case, the Court referred to *Doe v. Martin*, 404 F. Supp. 753 (D.D.C. 1975) (three judge court), which involved a branch of the Socialist Workers Party.

The Commission has recognized that the *Buckley* standard was reaffirmed in *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87 (1982), in which the Court "grant[ed] the SWP an exemption from state campaign disclosure requirements." *AO* at 3. In *Socialist Workers*, the Court found that:

[t]he District Court properly concluded that the evidence of private and Government hostility toward the SWP and its members establishes a reasonable probability that disclosing the names of contributors and recipients will subject them to threats, harassment and reprisals. There were numerous instances of recent harassment of the SWP both in Ohio and in other States. There was also considerable evidence of past Government harassment. Appellants challenge the relevance of this evidence of Government harassment in light of recent

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<sup>1</sup>The *Martin* case, cited with approval by the Supreme Court, concerned the constitutionality of portions of the 1974 District of Columbia Campaign Finance Reform and Conflict of Interest Act, Pub. L. 93-376, 88 Stat. 446, requiring, *inter alia*, every political committee to keep records showing the name, address, and place of business of contributors of \$10 or more, the designation of a depository bank through which the political committee will conduct all of its financial business, and the filing of publicly available reports listing the name, address, and place of business of each contributor of \$50 or more, as well as civil penalties for non-compliance. See *Doe v. Martin*, 404 F. Supp. at 755 n.1. In *Martin*, the plaintiffs asserted that the name, address, and places of employment of those supporting the SWP "will be noted by the FBI and others and that inquiries or other detrimental social pressures will ensue affecting employment and privacy." *Id.* at 755. The court had before it affidavits showing that private members had been harassed by government agencies and private employees, and also the findings of the Minnesota Ethics Commission exempting the Minnesota Socialist Workers 1974 Campaign Committee from the disclosure requirements of the Minnesota Ethics in Government Act of 1974. *Id.* at 756-57 n.4.

... efforts to curb official misconduct. Notwithstanding these efforts, the evidence suggests that hostility toward the SWP is ingrained and likely to continue.

459 U.S. at 100-01.

The Commission also recognized that *Socialist Workers* "clarified the extent of the exemption recognized in *Buckley*, stating that the exemption included the disclosure of the names of recipients of disbursements as well as the names of contributors." AO at 3 (citing *Socialist Workers*, 459 U.S. at 95). The Commission has recognized that the *Buckley* standard applies "to both contributors and recipients of disbursements." AO at 3.

The United States Court of Appeals for the Second Circuit used the *Buckley* standard to hold that it would violate the First Amendment to apply the disclosure and record keeping provisions of FECA to a campaign committee of the Communist Party. In *Federal Election Commission v. Hall-Tyner Election Campaign Committee*, 678 F.2d 416 (2d Cir. 1982), cert. denied, 459 U.S. 1145 (1983), the court considered the application of FECA to the campaign committee for the Presidential and Vice Presidential candidates of the Communist Party. In holding that this campaign committee could not be compelled, consistent with the First Amendment, to comply with FECA's disclosure and record keeping provision, the court stated:

[W]e note that *Buckley* did not impose unduly strict or burdensome requirements on the minority group seeking constitutional exemption. A minority party striving to avoid FECA's disclosure provisions *does not carry a burden of*

*demonstrating that harassment will certainly follow compelled disclosure of contributors' names.* Indeed, when First Amendment rights are at stake and the spectre of significant chill exists, courts have never required such a heavy burden to be carried because 'First Amendment freedoms need breathing space to survive.' [internal citations omitted]. Breathing space is especially important in a historical context of harassment based on political belief.

*Hall-Tyner*, 678 F.2d at 421-22 (emphasis added). See 1990 AO at 11,634. The Court found that based upon "the treatment historically accorded persons identified with the Communist Party" and a survey of statutes purporting to subject Communist Party members to civil and criminal liability, the minimal government interest in obtaining the information could not justify the restraint upon the First Amendment rights of the committee and its supporters. *Id.* at 422. Indeed, the Court admonished the Commission, stating that in light of the factual record, it had proceeded with an "appalling disregard for the needs of the free and open political process safeguarded by the First Amendment." *Id.* at 424. The Court further stated: "This agency charged with administering a comprehensive statute governing fundamental First Amendment freedoms should tread far more lightly than is apparent here. When dealing with values as fragile and precious as those contained in the First Amendment, special care is required." *Id.* It is clear from the Commission's citations to *Buckley*, *Socialist Workers*, and *Hall-Tyner* contained in the 1996 advisory opinion that the Commission has unequivocally recognized its obligation to protect the First Amendment rights of minor political parties. Moreover, the Commission has recognized that

notwithstanding efforts to curb official misconduct, the evidence suggests that "hostility toward the SWP is ingrained and likely to continue." *AO* at 11,634 (quoting *Socialist Workers*, 459 U.S. at 101).

More recently, in *McIntyre v. Ohio Elections Comm.*, 514 U.S. 334 (1995), the Supreme Court held that an Ohio statute prohibiting distribution of anonymous campaign literature violated the First Amendment. There, the Court reiterated the principle that FECA, while facially constitutional, is not constitutional in all of its applications. *Id.* at 1524 n.21. By way of illustration and example, the Court approvingly cited and quoted *Buckley v. Valeo* as "exempting minor parties from disclosure requirements if they can show a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties" and *Socialist Workers v. Socialist Workers '74 Campaign Committee* as "holding Ohio disclosure requirements unconstitutional as applied to a minor political party which historically has been the object of harassment by government officials and private parties." *Id.* (internal quotations omitted).

Further, in *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999), the Court reaffirmed the importance of First Amendment rights against compelled disclosure, finding that a Colorado statute requiring that proponents of an

initiative report names and addresses of all paid circulators and amount paid to each circulator violated the First Amendment's free speech guarantee.

In *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998), the Texas Supreme Court noted that due to the potential chilling effect, a compelling state interest was required in order to compel disclosure of an organization's members or contributors:

Compelled disclosure of the identities of an organization's members or contributors may have a chilling effect on the organization's contributors as well as on the organization's own activity. *See Buckley v. Valeo*, 424 U.S. 1, 66-68, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). For this reason, the First Amendment requires that a compelling state interest be shown before a court may order disclosure of membership in an organization engaged in the advocacy of particular beliefs. *Tilton*, 869 S.W.2d at 956 (citing *NAACP*, 357 U.S. at 462-63, 78 S.Ct. 1163).

*Id.* at 375.

D. Required Showing – "Reasonable Probability"

As the Commission recognized in its 1996 Opinion, *AO* at 2-3, the required showing that a minor political party must make to qualify for an exemption under *Buckley* is as follows:

Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a *reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties*. The proof may include, for example, specific evidence of past or present harassment of members due to their associational ties,

... or of harassment directed against the organization itself. A pattern of threats or specific manifestations of public hostility may be sufficient.

424 U.S. at 74. (emphasis added).

In *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998), the Texas Supreme Court considered what quantum of evidence met the *Buckley* standard. Plaintiffs offered evidence that "individuals opposed to BACALA's agenda had boycotted the business establishments of persons affiliated with BACALA and encouraged others to do the same" and that others would not make contributions to BACALA if they were identified. The Court found that although the harassment was not as severe as that in the *Brown v. Socialist Workers* case, a "factual record of violent past harassment" was not necessary to meet the *Buckley* standard. *Id.* at 377. Stated the Court:

In *Brown*, for example, the campaign committee introduced evidence of harassment including threatening phone calls, hate mail, destruction of property, and physical violence. We agree with the taxpayers that the threat to BACALA is not as severe as that demonstrated in cases such as *Brown* or *NAACP*. However, such a *factual record of violent past harassment is not the only situation in which courts have recognized a potential infringement on an association's First Amendment rights. Local 1814, Int'l Longshoremen's Assoc. v. Waterfront Comm'n of New York Harbor*, 667 F.2d 267, 271 (2d Cir.1981); see also *Community-Service Broadcasting of Mid-America, Inc. v. Federal Communications Comm'n*, 593 F.2d 1102, 1118 (D.C.Cir.1978) ("The absence of such concrete evidence [of harassment], however, does not mandate dismissal of the claim out of hand; rather it is the task of the court to evaluate the likelihood of any chilling effect....").

*Id.* (emphasis added).

The Texas Supreme Court then discussed what types of showings might be sufficient:

In *Local 1814*, the court found it sufficient that longshoremen contributors would perceive a connection between contributing to a political fund and being called before the Waterfront Commission and would therefore discontinue their contributions. *Local 1814*, 667 F.2d at 272 [additional internal citation omitted]. And in *Pollard v. Roberts*, the Supreme Court affirmed the district court's recognition of the potential infringement on First Amendment rights that could result from political and economic reprisals, even though no factual showing of such reprisals had been made:

While there is no evidence of record in this case that any individuals have as yet been subjected to reprisals on account of the contributions in question, *it would be naive not to recognize that the disclosure of the identities of contributors ... would subject at least some of them to potential economic or political reprisals of greater or lesser severity....* Disclosure or threat of disclosure well may tend to discourage both membership and contributions thus producing financial and political injury to the party affected.

*Pollard v. Roberts*, 283 F.Supp. 248, 258 (E.D.Ark.), *aff'd. per curiam*, 393 U.S. 14 (1968).

In sum, BACALA has offered factual, non-speculative evidence of economic and political reprisals against itself and its contributors. This evidence is sufficient to satisfy its burden of proof.

*Id.* (emphasis added).

#### E. Recent Amendments

The FEC was amended in 1999, 2000, and 2002, with such amendments to take effect during this next reporting period for the SWP. *See, e.g.* Pub. L. 106-58 § 641(b). Insofar as these new amendment may require the SWP to disclose the names of its

contributors and vendors, SWP requests exemption from these requirements as they will create the same chilling effect with regard to minor parties cautioned against in *Buckley* and *Socialist Workers*.<sup>2</sup>

## II. SWP's Status as a Minor Political Party

Where minor parties are concerned, courts have found that the government for a number of reasons has a diminished interest in the disclosure of information concerning contributors and contributions. First, as noted above, the Court in *Buckley* found that "the governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election." *Id.* at 70.<sup>3</sup> Second, minor parties are unlike the major political parties because they "usually represent definite and

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<sup>2</sup> The amendments include provisions governing:

- expenditure of personal funds. § 434(a)(6)(B)
- the posting of FEC filings on the Internet. § 434(a)(11)(B)
- software for filing of reports. § 434(a)(12)
- reporting requirements for national and congressional political committees. § 434(e)
- electioneering communications § 434(f)
- time for reporting certain expenditures. § 434(g)
- requiring reports from inaugural committees. § 434(h)

<sup>3</sup> Similarly, in *Federal Election Commission v. Tyner*, 524 F.Supp. 955 (S.D.N.Y. 1981), *aff'd* 678 F.2d 416 (2d Cir. 1982), the court found that because Communist Party candidates could not in the foreseeable future have a significant impact on an election, contributors did not have a reasonable expectation of exacting a quid pro quo, and that therefore the governmental interest in enforcing contribution was not sufficiently compelling to justify the resultant injury to associational rights.

publicized viewpoints; [thus] there may be less need to inform the voters of the interests that specific candidates represent." *Id.* Third, because minor party candidates are unlikely in the foreseeable future to win an election, contributors do not have "a reasonable expectation of exacting a *quid pro quo* from a current or potential elected official" and that therefore the governmental interest "in providing the FEC with data...is not sufficiently compelling to justify the injury resulting to important First Amendment rights." *Federal Election Commission v. Tyner*, 524 F.Supp. 955, 961 (S.D.N.Y. 1981), *aff'd* 678 F.2d 416 (2d. Cir. 1982).

In exhibits to this letter, we present additional evidence that establishes that SWP is clearly a minor political party and as such there is a diminished governmental interest in disclosure. No SWP candidate has come close to winning an election in the six years since the last exemption was granted. Exhibit C, Declaration of Margaret Trowe, October 9, 2002. SWP candidates for U.S. President received only 8,746 votes nationwide in 1996 and only 10,644 votes nationwide in 2000. *Id.* Further, no SWP candidates on the ballot for U.S. Senate or the House of Representatives received more than 15,000 votes in any election during that period, with the vast majority (thirty-five of thirty-seven candidates) receiving not even 5,000 votes. *Id.* Additionally, in 2000, the treasurer of the Socialist Workers National Campaign Committee requested that each of the SWP local committees that had supported a candidate for federal office report to him the total number of

contributors to their respective committees, as well as the number of contributors who had provided more than \$300. The results were as follows: (1) seventeen committees supported a candidate for federal office, and (2) a total of only 354 people *nationwide* contributed funds to those committees, for an average of only approximately twenty contributors per committee. Exhibit D, Declaration of Gregory McCartan, Dec. 23, 2000. Even more strikingly, there was only *one* contribution *nationwide* to those committees of over \$300.00. *Id.* Thus, the SWP is clearly a minor party that receives financial support in what can only be characterized as tiny amounts, and as such the governmental interest in disclosure is greatly diminished.

### III. Historical Background

For over two decades, the courts and the Commission have exempted the SWP from reporting and disclosure requirements under the FECA.

Before turning, in Part IV, to the evidence of recent harassment justifying the renewal of the exemption, we will discuss the extraordinary history of government persecution of the SWP – its long duration, extraordinary intensity, and gross illegality, all as determined by the federal courts<sup>4</sup> and by Congress.<sup>5</sup> As the Commission explicitly found

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<sup>4</sup>*Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357 (S.D.N.Y. 1986).

<sup>5</sup>Sen. Rep. No. 94-755, Senate Select Committee to Study Governmental Operations With Respect to Intelligence Activities, Book II, Intelligence Activities and the Rights of Americans, and Book III, Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans.

in its 1996 opinion, this history of harassment is a factor in determining whether an exemption should be granted:

Nevertheless, the continuation of harassment from private and local police sources during the 1990-1996 period, coupled with the long history of harassment of the SWP, is still sufficient evidence that there is a reasonable probability that the compelled public disclosure of previously exempted information will subject the persons in exempted categories to threats or harassment from various sources.

AO at 9. (emphasis added). The Commission further noted that the 1990 Opinion also considered "both 'present' and historical harassment" in agreeing to renew the exemption.

AO at 4 (emphasis added).

In its previous opinions, see 1996 Opinion at 3-5; 1990 Opinion at 11, 634-35, the Commission has described some of this extraordinary history of federal misconduct and animus. While there is no need to establish once again the facts already found by the Commission, we do believe it important to summarize here again that prior showing, lest the full force of what transpired be lost. Given the intensity, duration, and pervasiveness of government persecution, it is hardly surprising that the history of FBI disruption ("COINTELPRO"), warrantless burglaries, warrantless wiretaps, informant penetration, and the like still intimidates and still hampers the ability of the SWP to solicit contributions and to engage in educational and political activities. See, e.g. Exhibit E, Declaration of Sara J. Lobman, October 3, 2002.

Beginning in 1941, the Federal Bureau of Investigation began a generalized investigation of the SWP which was to last for at least the next 35 years. *Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357 (S.D.N.Y. 1986).<sup>6</sup> The investigation began in roughly the same time period that 18 supporters of the SWP were prosecuted and convicted for conspiring to advocate the violent overthrow of the government under the Smith Act, 18 U.S.C. § 2385. *Dunne v. United States*, 138 F.2d 137 (8th Cir. 1943), *cert. denied*, 320 U.S. 790 (1943).

In the course of its investigation, the FBI amassed over 8 million documents. Between the years 1960 and 1976, the FBI employed approximately 1,300 informers, of whom approximately 300 became or were supporters of the SWP, paying over \$1.6 million to the informers alone. The informers routinely and regularly reported upon the lawful political activities, discussions, and debates of the SWP as well as reported the names, addresses, descriptions and places of employment of supporters and their families. The informers reported, again on a regular basis, a host of personal information including

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<sup>6</sup>The facts concerning the government's generalized investigation of the Socialist Workers Party are drawn from this decision unless otherwise noted. In 1976, over the objections of the FBI, the Attorney General ostensibly terminated the generalized domestic security investigation of the SWP, 642 F. Supp. at 1400. In doing so, he specifically left open the possibility of reopening the investigation in the future, instructing that information concerning an asserted link between the SWP and a foreign-based political group "should be carefully watched" and that the emergence of "new facts or circumstances" may "justify investigation" and "a reconsideration would be in order." 642 F. Supp. at 1401.

information on marital or cohabitational status, marital strife, health, travel plans and personal habits.

As the Commission recognized, the SWP was the subject of the FBI COINTELPRO Program in the 1960's and 1970's. 1990 AO at 11,635. The avowed purpose of the program was "designed to disrupt the SWP on a national, as well as local level." *Id.* (quoting *Socialist Workers Party v. Attorney General*, 642 F. Supp. at 1348). Under the COINTELPRO Program directed specifically at the SWP,<sup>7</sup> at least 46 specific disruption operations were conducted by the FBI. The disruption included, among other activities,<sup>8</sup> attempts to embarrass SWP candidates, cause the arrest of candidates, foment racial strife within the SWP and between the SWP and other groups, and cause strife between SWP supporters and others in a variety of political movements and coalitions.

The Commission found that the FBI conducted warrantless electronic surveillance of the SWP on an extensive basis. *Id.* In total, electronic eavesdropping resulted in the collection of all manner of information on political matters as well as a host of information on more personal matters.

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<sup>7</sup>The SWP was also targeted for disruption under the auspices of the COINTELPRO Programs directed against the Communist Party and the "New Left." 642 F. Supp. at 1385.

<sup>8</sup>An overview of the disruption activities is set forth in *Socialist Workers Party v. Attorney General*, 642 F. Supp. at 1385-89. A more detailed description of many of the disruption activities can be found in Nelson Blackstock, COINTELPRO: THE FBI'S SECRET WAR ON POLITICAL FREEDOM (3rd ed. 1988).

During the same time period, the FBI conducted at least 204 "surreptitious entries," *Id.*, or black bag jobs, *i.e.*, burglaries of the offices of the SWP. These burglaries were, of course, not the only means by which the government obtained documents, for the government also maintained an extensive network of informants who, as the Commission found, "reported on the activities, discussions, and debates of the SWP." *Id.*

As the Commission noted, over a period of many years, the FBI maintained lists of the names, addresses, and employers of SWP members -- successively identified as the Custodial Detention List, the Security Index and the Administrative Index -- which targeted individuals for detention in the event of a "national emergency." *Id.* at 11,635. The FBI intended to include all SWP members on these lists.

*Id.*

Beginning in 1948, the SWP was included on the Attorney General's list of organizations designated pursuant to Executive Order 9835 establishing the Employee Loyalty Program for certain employees of the executive branch of the government.<sup>9</sup> Under

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<sup>9</sup>Executive Order 9835 provided that in determining loyalty to the government, one of the factors to be considered was an individual's membership in an organization designated by the Attorney General:

as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

the program, any member of a listed organization who applied for a job was subjected to a full field investigation by the FBI and was questioned concerning his or her loyalty. The loyalty determination was then used in determining whether to hire the individual.<sup>10</sup>

*Socialist Workers Party v. Attorney General*, 642 F. Supp. at 1396-97.

Even after the Attorney General's list was terminated in 1974, the FBI continued to report an individual's membership in the SWP. In that period, the FBI described the SWP as follows:

The SWP is a revolutionary, Trotskyist-communist organization which has as its purpose the overthrow of the U.S. Government and the institution of a dictatorship of the working class and the eventual achievement of a communist society.

642 F. Supp. at 1399.

In 1986, after 13 years of litigation, the court in *Socialist Workers Party v. Attorney General* awarded damages against the United States for this sustained and systematic violation of the SWP's rights. 642 F. Supp. at 1417-25. It found that the FBI had acted "with a malign purpose," with the intent of causing harm, and without any legal authority or justification. *Id.* at 1419-20.

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Executive Order 9835 was substantially amended by Executive Order 10241 and superseded by Executive Order 10450 so as to include *all* government civilian employees. The Attorney General continued to maintain his list including the SWP throughout these changes.

<sup>10</sup>There have been a number of instances in which the fact of the individual's association with the SWP affected his or her employment. See 642 F. Supp. at 1389-99.

As the Commission found in its 1990 Advisory Opinion, there is reason to believe that the federal animus against the SWP continues, *1990 Opinion* at 11,635, reinforcing the chilling effect on First Amendment rights created by past misconduct. The Commission noted that, even after the federal court had issued its 1986 judgment holding the FBI's decades-old campaign against the SWP unconstitutional, *Socialist Workers Party*, 642 F. Supp. 1357, and had further found that, as the Commission summarized the holding, the SWP was engaged in "peaceful, lawful political activity," *1990 AO* at 11,635, the federal government submitted affidavits in 1987 asserting a continuing need to access information about the SWP, its members, and supporters. The Commission found these affidavits to be significant evidence of the existence of continued governmental hostility. *Id.* In the government's view, the SWP remained a "hostile organization which has consistently posed a threat to free government." *Id.* (internal quotations omitted). The government continued to insist that "it was -- and is -- reasonable for the FBI and other agencies of the Government to believe that the SWP and its members have a revolutionary ideology whose goal is the violent overthrow of our democratic processes and form of government." Exhibit B to SWP's November, 1, 1996 Advisory Opinion Request to the FEC ("1996 Request") at 9 (emphasis supplied); this "revolutionary ideology . . . poses a threat to the fundamental interest of self-preservation," *id.* at 10.

On this basis, the federal government asserted an interest in and need to know and record the names of members and individuals associated with the SWP. *See Socialist Workers Party v. Attorney General*, 666 F. Supp. 621, 623 (S.D.N.Y. 1987).

Representatives of various government agencies expressed their intent to use such information, and their fundamental antagonism toward the SWP, in clear terms. For example, the Office of Personal Management argued that such "information [is] important because these organizations in the past were opposed to our form of Government and the national interest." Declaration of Gary B. McDaniel ¶ 6, Exhibit C to 1996 Request. The Department of State asserted its need for access to these files because of a need for information about, in its representative's words, "interaction with a group advancing a hostile ideology" for security clearances, and "information about any hostile organization which has consistently posed a threat to free governments. . . ." Declaration of Roger H. Robinson, ¶¶ 4, 6 Exhibit D to 1996 Request. The Immigration and Naturalization Service claimed a need to know the identities of SWP supporters in order to enforce laws making an individual who advocates world communism or the establishment of totalitarian dictatorship deportable from this country, excludable from this country or ineligible for naturalization. Declaration of Edwin W. Dornell, ¶¶ 5, 6, Exhibit E to 1996 Request.<sup>11</sup> *See*

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<sup>11</sup>See 8 U.S.C. §§ 1182(2)(28)(D) and (F), 8 U.S.C. § 1251(a)(6)(D) and 8 U.S.C. 1424(a)(3). There are numerous statutes in addition to these immigration provisions which place supporters of the SWP in danger of legal sanctions or harassment if their associations were made public. In addition to the Smith

*also* Declaration of Thomas J. O'Brien ¶¶ 3-9, Exhibit F to 1996 Request, explaining need for access to FBI files on the SWP because they "may serve to corroborate or establish an affiliation with" an organization "characterized by Executive Order 10450" for the purposes of investigations of members of the armed services, civilian employees and employees in industry by the Defense Investigative Service.

The court ruled against the government's demand for access to the names of SWP members and associated individuals. *Socialist Workers Party v. Attorney General*, 666 F. Supp. 621, 623 (S. D. N. Y. 1987). More significantly for the issue at hand here, the government's assertions of need of information and pronouncements of intended uses reinforce the lesson reasonable persons draw from the historical record of federal misconduct and animus: that disclosure of their relations with or support of the SWP or its candidates might provide, now or sometime in the future, a basis for federal investigation or other prejudicial actions.

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Act, 18 U.S.C. § 2385, there is a host of other legislation which potentially exposes individuals to civil and criminal sanctions. See discussion in *FEC v. Hall-Tyler Election Campaign Committee*, 678 F.2d at 422 and statutes surveyed in Appendix to Brief of Defendants-Appellee filed in that case.

**IV. Evidence of Harrassment: 1996-2002**

**A. Introduction**

Below are summaries of evidence of continuous threats, harassment, and reprisals directed at the SWP, and of SWP's continued status as minor political party since the submission. Dispositively, the current submission is comparable to the factual submission that this Commission previously found sufficient to justify exemption in 1996. Indeed, in 1996 we presented documentation of 72 incidents of harassment, and here we present documentation of 74 incidents. Each incident is documented by sworn declarations of a person with personal knowledge of the matter, contemporaneous correspondence, official records, photographs, or articles that appear in mass circulation sources unrelated to any party. These incidents are documented in the volume of exhibits accompanying this request for an advisory opinion and reference is made thereto. The exhibits have been arranged to correspond to the numeration in this summary.

As shown by these incidents:

- harassment of SWP supporters continues to take place nationwide.
- the incidents include egregious examples such as death threats, terminations of employment, office break-ins, and the strewing of animal parts.
- there is widespread harassment of SWP supporters by private parties and local authorities, both of which are constitutionally significant under *Buckley* and *Socialist Workers*.
- there also have been at least three instances of reprisal or harassment by officers of the federal government.

Additionally, the State of Washington Public Disclosure Commission on August 27, 1998 granted the Socialist Workers Party 1997 Campaign (the election campaign committee of the SWP) an exemption from state reporting requirements (hereinafter, "State of Washington Opinion"); attached hereto as Exhibit F. Based on testimony offered at a hearing, the Commission made the following findings of fact:

2. There is a long history of harassment, disruptive efforts by individuals and government agencies, government surveillance, and threats against individuals identified with the Socialist Workers Party nationwide. The Socialist Workers Party is outspoken in its defense of the rights of Blacks and other minorities, desegregation, affirmative action, and similar other controversial issues. As a result, candidates and party supporters have been subject to racial threats and potential victimization....
5. There are instances where businesses fear they will become the target of reprisals if it is known they do business with the party or its candidates....
6. Disclosure of the names and addresses of person who contribute...[or] the names and addresses of persons who supply goods and services...[or] the occupation of any coded contributors, or the employers of such contributors....[or] [M]aking the books and records of the Party available for public inspection...could have a chilling effect on the party's ability to solicit and collect campaign funds, and on the Party's ability to purchase necessary campaign materials and services.

State of Washington Opinion at 1-2. The Commission concluded that "literal compliance with all the provisions of the [reporting] statute...would work a manifestly unreasonable hardship on the applicant. *Id.* at 2.

Prior to the state decision, the City of Seattle Ethics and Elections Commission on September 27, 1997 did deny the SWP an exemption from the relevant municipal disclosure laws ("City of Seattle Opinion")(attached hereto as Exhibit G), basing its opinion in part on the grounds that "a large segment of the local population openly and routinely expresses views on... issues [of abortion rights and union support] that parallel those of the Socialist Workers' 1997 Campaign." The events that followed, however, only reinforce the continuing need for exemptions, even in a city as famously tolerant as Seattle. In September 1997, an individual who had mailed the SWP a check visited the SWP offices *in person* to seek the return of his contribution, stating that he had learned of the City of Seattle's recent denial of the exemption, and that he did not want his identity as a Socialist Workers Party contributor publically disclosed. When he learned that the name of his employer would also be disclosed, he expressed even more concern. Exhibit H. Also in September 1997, shortly after the issuance of the City of Seattle Opinion, a long time SWP supporter said that he and his wife would certainly think twice about contributing to the SWP, and he was especially concerned about reprisals against his wife, a Boeing employee. Exhibit I. Additionally, there have been numerous instances of harassment of SWP supporters in Seattle subsequent to the City of Seattle's ruling. See Exhibits 50, 51, 52, 56, 66, 67, 69, 73, 74. Clearly, the Commissioners in Seattle had too sanguine a view in denying the exemption.

The need for continued exemptions is also clearly demonstrated by the SWP's 2000 U.S. presidential campaign, where many people who were interested in the campaign, including co-workers of the SWP presidential candidate, declined to disclose their names or addresses--either on nominating petitions aimed at placing the candidate on the ballot, or by subscribing to newspapers endorsing SWP candidates-- because they feared being placed on a federal or FBI list. Exhibit J, Declaration of Margaret Trowe, December 23, 2000; Exhibit K, Declaration of James Harris, December 23, 2000; *see also* Exhibit L, First Declaration of Edwin Fruit; September 30, 2002; Exhibit M, Second Declaration of Edwin Fruit, September 30, 2002; Exhibit N, Malapanis Declaration, Oct 9, 2002.

**B. Specific Incidents**

We summarize the post-1996 showing of harassment, threats, and reprisals as follows:

1. In September 2002, SWP supporters staffing a literature table at a book fair in New York City were threatened by a man who screamed "I'll kick your ass, and don't think I can't," and that the SWP supporters did not have the right to distribute this "fucking shit."
2. In September 2002, SWP supporters were campaigning outside a factory in Newark when a man who identified himself as the factory's owner ripped a leaflet out of one

- of the supporter's hands, threatened to "fuck ...up" the supporters, told them to "get the fuck off his property" and repeatedly shoved them.
3. In September 2002, someone left a voice mail message at the SWP campaign headquarters in San Francisco, saying "Hey you cocksucker...war with Iraq. Bye."
4. In September 2002, an SWP candidate for governor was addressing a crowd from a soapbox in Omaha, Nebraska. A woman threatened the candidate and SWP supporters, saying that if they didn't leave, she would come back with some of her friends and take care of them.
5. In August 2002, during a public petition drive in Washington, D.C. to place an SWP nominee on the mayoral ballot, SWP campaign headquarters were broken into three times in one week, with minor items taken on the first break-in, and apparently nothing taken in the second two break-ins. On the last break-in, the intruder or intruders rifled through the bags and briefcases of SWP supporters.
6. In June 2002, SWP supporters set up a literature table outside a supermarket in Miami. A security guard and a manager from the supermarket told them to leave or else they would call the police. After the SWP supporters moved the table across the street, the security guard informed them that the owner of the store said that all of the sidewalks around the store were his property, and that he was going to call

the police. A police officer arrived and confirmed that they were on public property, but forced the SWP supporters to take the table down.

7. In June 2002, SWP supporters were staffing a literature table in New York City when the operator of a nearby photo shop objected to the table and called over two policemen, who ordered the SWP supporters to move. As they were leaving, the shopkeeper said that he would try to keep the tables off the streets in that area.
8. In June 2002, SWP supporters were staffing a table in the garment district of New York City. A man who said he owned storefront business there told the SWP supporters they would have to move, and as they were moving he threatened to turn over the table.
9. In May 2002, a volunteer at an SWP literature table in Chicago was harassed. A man pushed a volunteer, knocking him back a few feet, and then invited the volunteer to "take a swing" at him.
10. In March 2002, a Newark, New Jersey police officer ordered SWP supporters to take down a campaign table at a street corner or else face arrest, since tables were not permitted on the street, even if nothing was being sold. The officer took down an SWP supporter's name, Social Security number, occupation, and place of work, informing the supporter that it would be kept on file so that he would immediately be arrested if he were caught doing something similar in the future.

11. In February 2002, three SWP supporters set up a literature table on a sidewalk in Jackson Heights, Queens. Within ten minutes, three New York City police officers approached and told them to leave, stating that the owner of a nearby store objected to the content of the literature.
12. In February 2002, a break-in occurred at the SWP campaign office in Houston, Texas. A window was smashed, a computer table broken, a scanner destroyed, and a printer pulled apart. The small amount of cash in the office was not taken. A flyer in the window, announcing a campaign in support of Palestinian rights and featuring a picture of a Palestinian child, was slit and stepped on.
13. In December 2001, two police officers opened the door to an SWP meeting in San Francisco and said they were responding to a 911 call from that location. The SWP supporters told the officers that they had made no such call, and the officers left.
14. In November 2001, on the night after a Houston mayoral election in which the SWP had fielded a candidate, a local police officer opened the door of the SWP campaign offices in Houston, Texas without knocking and interrupted discussions that were taking place.
15. In October 2001, the SWP candidate for Mayor of Miami was fired from his job after he publicly criticized U.S. policy in Afghanistan during a public debate of the mayoral candidates. As reported in the Miami Herald, the incumbent mayor called

him "treasonous" for those comments. Nine days after the debate, a manager fired the SWP candidate from his job, stating that the employee's views concerning U.S. government policy were contrary to those of the company. A State of Florida unemployment program later determined that he "was discharged because of political views."

16. In October 2001, an SWP candidate for Mayor of St. Paul, Minnesota was threatened by local police with a citation for setting up a literature table.
17. In October 2001, a man threatened SWP supporters at a literature table in San Francisco and said "I'll cut your throat!" and "You fucking bitch!" and "Get the fuck out of here," and grabbed the table, and also stood with his fists drawn back.
18. In October 2001, an SWP candidate for Mayor of Houston, Texas was threatened with immediate firing from his job at in a plant of Park Ten Foods, a subsidiary of Hormel Corporation, if any literature with his name on it appeared in the plant, regardless of who brought it in.
19. In September 2001, SWP supporters were campaigning for an SWP congressional candidate at a table near a transit stop in East Boston, Massachusetts. A man approached the table and made loud and unintelligible remarks, and a few minutes later two oranges were thrown from across the street and landed near the table.

20. In September 2001, a man approached an SWP literature table in San Francisco and flailed his arms and screamed "You fucking liberals", and a second man later threatened to punch an SWP campaigner.
21. In September 2001, four SWP supporters in New York City were attacked at a campaign table. One man tore a sign about Israel off the table and then overturned it. Two other men joined in and attacked the campaign supporters, who had to defend themselves with the help of bystanders.
22. In September 2001, vandals egged SWP headquarters in Des Moines, Iowa, as reported in the Des Moines Register.
23. In August 2001, while at a literature table, a young man told an SWP candidate for Mayor of Cleveland, Ohio that "he was betraying the white race" and that "I'm going to firebomb your house."
24. In July 2001, in Brooklyn, New York, local police officers charged SWP supporters at a literature table with disorderly conduct and unlicensed vending. Security guards from the nearby Brooklyn Academy of Music had stayed near the table for two hours, videotaping the SWP supporters and making a list of books on the table. The charges were later suspended by a judge.

25. In July 2001, in Charlotte, North Carolina, a young man boasted to a SWP supporter at a literature table about how many "commies" he'd killed, and then told the SWP supporter in a threatening way, "[o]bviously, I didn't kill enough."
26. In March 2001, SWP supporters distributing the *Militant* newspaper in the parking lot of a Wal-Mart in Bessemer, Alabama when a Wal-Mart customer said "Socialist? Can I say 'Fuck' you'?" in a threatening tone of voice. Later, a security guard blocked their way with his car as they attempted to leave.
27. In March 2001, a man and a woman pounded very hard on the glass of the SWP branch headquarters in Chicago, Illinois. A manager from an office of a different organization across the hall thought they were going to break the glass and asked them to stop. They became irate and questioned her, and continued to bang on the glass. She said that if they didn't stop and leave she would have to call the police. They became even more irate and said "Fuckin' Communist, you are a part of them."
28. In October 2000, someone wrote "COMMUNIST BITCH" on a sign advertising a speaking engagement by the SWP's candidate for U.S. Vice President at Florida International University in Miami.
29. In September 2000, someone defaced the Iowa Socialist Workers Campaign headquarters in Des Moines, Iowa with animal parts and products such as pigs feet, chicken livers, and eggs. Two pigs feet were shoved through the mail slot, chicken

livers were thrown at the front and side walls of the building, and the front windows were pelted with eggs. The attack was noted in the Des Moines Register, and is documented in attached photographs.

30. In September 2000, someone defaced a picture of an SWP presidential candidate on the door of a dorm room in Pittsburgh, Pennsylvania. KKK slogans were also written on the door.

31. In September 2000, the SWP National Campaign Committee received a threatening email stating in part:

I took out a bunch of your friends in the war ( Vietnam ). I know you  
Like a book. I wonder how you can be such idiots. My job in the war  
Was to kill Columnists [sic], and was good at it. The only good Columnist  
is a dead Columnist.

32. In July 2000, in New York, New York, a self-described Neo-Nazi told an SWP campaigner that he was "his enemy" and that "I would kill you if I could."

33. In June 2000, SWP campaigners on public property outside a meat packing plant in Toppenish, Washington were threatened by company management and made to leave.

34. In June 2000, two SWP supporters were selling newspapers on a public sidewalk in Scranton, Pennsylvania in front of a meat packing plant. The newspapers carried articles on a sit-down strike at a meat packing house in another state. A man who identified himself as the owner of the plant approached the SWP workers and

- shouted obscenities at them. He then grabbed a copy of a newspaper out of a plant worker's hands and tore it to pieces. He threatened to call the police and close the plant down.
35. In June 2000, at the University of Texas-Pan American in Edinburg, Texas, SWP campaign workers were forced by campus police officers to shut down a campaign table, although they had been setting up there for many years. The officers asked for identification from a student who had been speaking to the campaigners, and then demanded that both students at the table leave. University officials later stated they had received no calls from the campus police and confirmed that political literature tables were indeed normally set up in those locations.
36. In June 2000, SWP supporters handing out anti-police brutality literature in an area of the sidewalk populated by literature tables of other political groups, as well as musicians and dancers, were given a summons and threatened with arrest in University City, Missouri. The citing officers picked up a copy of the SWP literature and laughed at it, and then brought back an additional officer. The SWP supporters offered to take down the table in response to the officers' objections but were given a summons nonetheless.
37. In June 2000, SWP campaigners on public property were made to stop campaigning and leave by police officers in Fowler, California. The campaigners were on a

- street outside the Bee Sweet citrus packer plant in Fowler, California when at least three police cars approached. Several officers asked a series of questions and said that they needed a license to sell on the street. The campaigners offered to leave and the officers said something to the effect of that would be best.
38. In June 2000, a man threatened to overturn the car of an SWP supporter, and also tried to overturn an SWP literature table on a public sidewalk outside a hosiery mill in Charlotte, North Carolina. Most of the literature fell to the ground. As the SWP supporters were leaving, a woman from the company office came out and if said they came back "we'll be ready"
39. In May 2000, in Detroit, Michigan, the front window of the SWP campaign headquarters and bookstore in the same premises was shattered.
40. In May 2000, SWP supporters were selling the *Militant* newspaper door-to-door in Frackville, Pennsylvania. A local police officer instructed them to stop because of a borough ordinance requiring a license for "transient retail business." One of the SWP supporters showed the officer a copy of the Pennsylvania legal code that noted a Pennsylvania decision holding that selling a socialist newspaper door-to-door was "political, as opposed to commercial activity" and that barring it under a borough peddling and soliciting ordinance was unconstitutional. The police officer nonetheless told the SWP supporters to leave.

41. In April 2000, SWP supporters were going door-to-door in Tamaqua, Pennsylvania distributing copies of the *Militant* newspaper. A local police officer drove up in his car and told them they were violating an ordinance barring door-to-door soliciting. The supporters told the officer they were not soliciting, but rather were distributing political literature as per their constitutional rights. The officer took them to the police station in his car and gave them citations to appear in court. Their attorney wrote a letter to police department stating that they were engaged in constitutionally protected activity. The citations were dropped one month later.
42. In March 2000, an SWP supporter was seriously threatened at his job in Wayne, Pennsylvania. A picture of a man with black dots, like bullet holes, drawn on his chest, and with the SWP supporter's name written on it, was placed on a bulletin board. Another picture, this one of a wrecked car that resembled the car of the SWP supporter, was also placed on the board, also with the SWP supporter's name written on it.
43. In February 2000, a SWP supporter and presidential elector in Wisconsin took the exam to become a federal census worker. He scored a 97 and was listed as a "priority hire." Though he was supposed to hear of the results in two weeks, he heard nothing for a few months. He was told by census officials that his file had been sent to the FBI for security clearance, and the FBI confirmed this. After many

unsuccessful calls to the FBI to check on the status of his file, the SWP supporter called a reporter who had written a story about a census applicant whose file was being checked by the FBI and had not been hired, but who had been eventually cleared. Soon after talking to the reporter, he received a call back from an FBI agent. But unlike the subject of the reporter's story, the SWP supporter was never cleared by the FBI. Despite his listing as a "priority hire" and his sustained efforts to follow up on his application, he was never hired by the federal Census Bureau.

44. In December 1999, SWP supporters were cursed at and nearly run over by a man in a pickup truck in Ontario, Ohio. The SWP supporters had sold several copies of the *Militant* to workers at a General Motors plant there when a man in a pickup truck entering the plant stopped where one of them stood. "We don't want your commie shit here. I'm going to go in and get my buddies and come out here and kick your ass," said the man in the truck. He pulled forward, and then accelerated rapidly back toward the SWP supporters in reverse, with his tires leaving marks on the pavement. The SWP supporter jumped away from the truck.
45. In October 1999, federal park police officers intimidated SWP supporters in Washington, D.C. The officers told SWP supporters at a literature table during at a rally in Malcolm X Park they could not sell literature or accept donations in the

park, and if they did they would be arrested. An officer stood next to the table for the entire rally.

46. In May 1999, a man was loud and abusive and threatened SWP supporters outside their campaign headquarters in Des Moines, Iowa, stating that he would use a "cutting torch" on a nearby gate and the building. He said "you commies are causing a problem with the gate and if you close it again I'll come back and kick your ass."
47. In March and April 1999, the SWP office located in the Pathfinder Bookstore in Des Moines, Iowa, was pelted with eggs four times, as reported in the Des Moines Register and as evinced in the attached photographs.
48. In April 1999, SWP campaign supporters were threatened with arrest by local sheriffs for distributing literature near a coal mine in Morganfield, Kentucky.
49. In September 1998, SWP supporters who had been distributing literature on a public sidewalk near the employee's entrance to Reagan National Airport and who were already in their car and preparing to leave were approached by two airport authority police cars. Four officers approached, two on each side of the car. The officers were interested in the content and viewpoint of the materials, and asked to see the flyers. One said "Militant, that scares me. 'Militant,' 'militia,' same difference, right." They were then told that they needed a permit.

50. In July 1998, SWP campaigners were gathering signatures for SWP U.S. Congressional candidates in Seattle, Washington when they were severely threatened. An individual approached them and said "I have right to own a pistol and if I find a communist on the ballot...boom!" and "I spent 25 years in the U.S. Army including in Vietnam and that gives me the right to keep communists, socialists, and other motherfuckers off the street."
51. In July 1998, a man told SWP campaigners outside a supermarket in Seattle, Washington that Socialists "should be shot."
52. In July 1998, a self-identified member of the Aryan Nation harrassed and yelled obscenities at SWP supporters who were gathering signatures in Seattle, Washington.
53. In July 1998, at Penn Station in Newark, New Jersey, SWP campaigners who were collecting signatures to place SWP candidates for the U.S. Senate on the ballot were forced by transit police to leave the station, despite the fact that they had a permit specifically allowing them to collect signatures there. Later, the SWP campaigners set up a table in downtown Newark. They were verbally abused and threatened with arrest by Newark police officers, who forcibly began removing some of the literature and confiscated some of it as "evidence," and then forced the campaigners to take down the table.

54. In June 1998, an SWP candidate for Congress was formally threatened with firing if she continued to express her political views and distribute the *Militant* at work, even though other workers sold raffle tickets, cookies, and other items and distributed religious literature without harassment.
55. In April 1998, District of Columbia police harassed SWP campaign supporters and forced them to take down their literature table.
56. In April 1998, two young men approached an SWP table on a public sidewalk in Seattle, Washington and swore at them and at passerby, told people who stopped at the table that they shouldn't be walking the streets, and forced the supporters to take the table down.
57. In March 1998, SWP supporters were harassed by a campus police officer at an auditorium at the University of Alabama-Birmingham. A campus police officer approached SWP supporters at their literature table and asked for identification, and demanded to know what group they were with, and where the books were coming from. The SWP supporters told the officer they would take down the table if there was a problem, and in fact did so. Even so, the officer called police headquarters, and then issued a trespass warning. He then threatened them with jail if they ever were found on state property again. He also forced them to leave the area entirely

and not attend the lecture in the auditorium. Officers followed the SWP supporters as they walked back to their car.

58. In February 1998, two federal officers from the Federal Protective Service and one local police officer came out of the Federal Building in Birmingham, Alabama during a picket line to protest U.S. policy in Iraq. The officers stood near each picketer and took individual close-up pictures of each of their faces.
59. In February 1998, "Kill all niggers" was written three times in ballpoint pen on the door of SWP offices in San Francisco.
60. In February 1998, SWP supporters in Minneapolis, Minnesota were threatened with "enforcement action" for setting up a literature table on the sidewalk, despite being told about a prior federal court injunction permitting such tabling. The officer said they were blocking the sidewalk, but the SWP supporters and a bystander who has provided his name and address have stated that they were clearly not blocking the sidewalk
61. In December 1997, SWP offices in Saint Paul, Minnesota received two threatening phone calls, each stating "you're done."
62. In September 1997, an SWP candidate was intimidated by his employers at Boeing after a radio appearance in which he discussed his political views. The company

called him to a meeting with its Employee Relations-Ethics department. He was told that his appearance on the radio was being investigated by the company.

63. In September 1997, SWP supporters were cursed at and threatened with arrest by a local police officer in Chelsea, Massachusetts. An SWP candidate for city council was at a literature table when an officer pulled his car into a nearby driveway, blocking the sidewalk. When another supporter identified the first as a candidate for city council and said they had a right to distribute campaign materials, the officer said he was a "wise guy" and would be arrested if he said another word. The officer said he would arrest the candidate for "blocking public access", though they were not blocking the sidewalk or any passageway. The officer said he had gotten complaints about "this military shit you were passing out." The supporters contacted the ACLU, who contacted the City Attorney, who said that the candidate had a right to campaign without a permit so long as the sidewalk was not obstructed and no table was set up.
64. In September 1997, a threatening message was left on the SWP campaign committee voicemail, stating that "Soon you liars will pay for your crimes."
65. In August 1997, an off-duty Minneapolis police officer gave a citation to SWP supporters and ordered them to shut down their campaign table. SWP supporters filed suit in federal court and a federal district judge temporarily enjoined the

enforcement of the relevant ordinances on the grounds that they impinged on First Amendment rights. The citations were then dropped.

66. In July 1997, while collecting signatures to place an SWP candidate on the mayoral ballot in Seattle, SWP campaigners were cursed at and harassed by a man.
67. In July 1997, two men intimidated and harassed SWP campaigners in Seattle who were seeking signatures to place candidates on the municipal ballot. One man spat at the campaigners, and the other angrily yelled "fucking communist."
68. In July 1997, SWP campaigners set up a table with SWP literature and campaign materials for SWP candidates for mayor and city council outside the NAACP national convention in Pittsburgh. A convention police officer and a city police officer forced them to take down the table.
69. In May 1997, the following message was left on the answering machine at SWP campaign headquarters in Seattle, Washington: "You poor deprived little Militant Labor Forum pukes ought to kiss my motherfucking ass."
70. In April 1997, SWP campaigners on a public sidewalk who were attempting to collect signatures to place a candidate on the ballot were told by Howard University police officers that they were trespassing and that they would be arrested.

71. In April 1997, after having made an appearance on local television criticizing U.S. policy towards Cuba, an SWP supporter had his tires slashed at work in Opa Locka, Florida. His tires were slashed again in the spring of 1998.
72. In February 1997, Young Socialists in Spokane, Washington were harassed by security guards at a downtown transit center. The guards covered up the signs and the books on their literature table, forcefully argued with the campaigners for more than half an hour, effectively using up their time and preventing them from speaking to the public, and checked their permit numerous times.
73. In October 1996, someone left the following messages on the answering machine of SWP campaign headquarters in Seattle, Washington: 1) "You're nothing but a dumb, Black-assed reverse racist piece of shit. You want to turn this country into a U.S.S.R. run by Blacks and Hispanics," and 2) "Fucking morons, the Cubans are starving, you guys are so stupid."
74. In October 1996, SWP campaign headquarters in Seattle received anonymous threatening mail, stating, among other things, that "I can't even imagine there ever being a nigger president and a Mexican spic greaser vice president. I am enclosing a 14" by 4" dildo for your pleasure."

## CONCLUSION

Based on the foregoing, there is a reasonable probability that the compelled disclosure of the Socialist Workers Party's contributions and recipients will subject them to threats, harassment or reprisals from private citizens or various branches of the government. The factual showing made here evidencing continued harassment along with the continuing impact of the long history of governmental harassment is in all respects comparable to the showing that was made in 1996. The SWP has again demonstrated that there is a reasonable probability that they will be subject to threats, harassment, or reprisals from governmental or private sources unless its campaign committees are granted a renewal of the exemption granted in the 1996 advisory opinion and that under the First Amendment, the SWP and its campaign committees cannot be compelled to disclose information concerning their contributors or recipients.

Sincerely yours,



Michael Krinsky  
Jaykumar Menon