



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 10, 2007

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-23

Mr. A. Joshua Ehrlich, Esq.  
Attorney At Law  
Capitol Station  
P.O. Box 7273  
Albany, NY 12224

Dear Mr. Ehrlich:

We are responding to your inquiry regarding the status of the Independence Party of New York (the "IPNY") as a State party committee of a political party under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations. The Commission concludes that the IPNY qualifies as a State party committee because: (1) the IPNY qualifies as a political party; and (2) the IPNY is responsible for the day-to-day operations of a political party at the State level.

***Background***

The facts presented in this advisory opinion are based on your letter received on September 19, 2007 as supplemented by an e-mail communication received on September 20, 2007 and a letter received on October 15, 2007.

The IPNY was founded in 1992. At this time, it is not affiliated with a national political party.<sup>1</sup> Since its inception, the IPNY has achieved ballot status pursuant to New York State Election Law ("Election Law") 1-104(3) in each succeeding gubernatorial election through 2006. Pursuant to Election Law 6-104, the State Committee of the IPNY (the "IPNY Committee") directly nominates IPNY candidates for any Statewide elective office to be filled by all the voters of the State. Nominees are guaranteed a place

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<sup>1</sup> According to the website [www.independencepartyofamerica.com](http://www.independencepartyofamerica.com) the IPNY, in cooperation with others, is actively seeking to launch a national political party, to be known as the Independence Party of America.

on the ballot by virtue of the IPNY's ballot status. Election Law 7-116(1). Senator Hillary Clinton appeared on the general election ballot as the IPNY's candidate for U.S. Senator in 2006.<sup>2</sup> Several other individuals appeared on the 2006 ballot as the IPNY's candidates for election to the U.S. House of Representatives, including, for example, Representative Gary Ackerman (5<sup>th</sup> Congressional District), former Representative Sue Kelly (19<sup>th</sup> Congressional District), and Representative Louise Slaughter (28<sup>th</sup> Congressional District).<sup>3</sup>

The IPNY Committee Rules<sup>4</sup> control the governance of the IPNY. These Rules are on file with the New York State Board of Elections pursuant to Election Law 2-114(1). The IPNY Rules detail various aspects of the organization and operation of the IPNY. Under the IPNY Rules, members of the IPNY Committee are elected from Assembly Districts, and twenty-five members are chosen to serve as executive officers. Rules, Art. II, Secs. 1, 2. The IPNY Committee holds meetings at least three times per year, and may schedule additional meetings upon written petition of a sufficient number of members. Rules, Art. III. The IPNY Rules contain procedures for voting at such meetings, for endorsing IPNY candidates for Federal, State and local elective offices, and for constituting interim county committees, county committees, and judicial district nominating conventions. Rules, Arts. IV-VI, X-XI. The IPNY Committee has constituted county committees pursuant to the Rules and Election Law. *See* IPNY Rules, Art. X, Election Law Art. 2.

### ***Question Presented***

*Does the IPNY qualify as a State committee of a political party within the meaning of the Act and Commission regulations?*

### ***Legal Analysis and Conclusion***

Yes, the IPNY qualifies as a State committee of a political party within the meaning of the Act and Commission regulations.

A "State committee" is an organization that, by virtue of the bylaws of a political party or the operation of State law, is part of the official party structure and is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission. 2 U.S.C. 431(15); 11 CFR 100.14(a).

The first question in determining whether a political committee is a State committee of a political party is whether the organization itself qualifies as a "political

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<sup>2</sup> This information was obtained from the official website of the New York State Board of Elections, which provides a chart detailing the U.S. Senate election returns for November 7, 2006. *See* [www.elections.state.ny.us/NYSBOE/elections/2006/general/2006\\_ussen.pdf](http://www.elections.state.ny.us/NYSBOE/elections/2006/general/2006_ussen.pdf). The chart lists vote totals for each of the party candidates by county.

<sup>3</sup> *See* [www.elections.state.ny.us/NYSBOE/elections/2006/general/2006\\_cong.pdf](http://www.elections.state.ny.us/NYSBOE/elections/2006/general/2006_cong.pdf).

<sup>4</sup> This document is included in the Advisory Opinion Request, which is available at <http://saos.nictusa.com/saos/searchao>.

party” under the Act and Commission regulations. *See, e.g.*, Advisory Opinions 2007-06 (Indiana Libertarian Party) and 2004-40 (Libertarian Party of Maryland). A “political party” is an “association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization.” 2 U.S.C. 431(16); 11 CFR 100.15. The IPNY candidate identified in your request, Senator Clinton, as well as Representatives Ackerman and Slaughter, and former Representative Kelly, each received or expended amounts in excess of \$5,000 in their 2006 campaigns according to disclosure reports filed with the Commission, and therefore, all satisfy the Act’s definition of a “candidate.”<sup>5</sup> 2 U.S.C. 431(2); 11 CFR 100.3(a)(1). Senator Clinton and the three House candidates appeared on the 2006 ballot in the State of New York as the IPNY’s candidates for the U.S. Senate and the U.S. House of Representatives respectively.<sup>6</sup> Accordingly, the Commission concludes that the IPNY satisfies the definition of “political party” under the Act.

The second question in determining whether the IPNY is a State committee of a political party is whether the requesting committee satisfies the remaining elements of the definition of a “State committee” of a political party. *See, e.g.*, Advisory Opinions 2007-06 (Indiana Libertarian Party), 2007-02 (Arizona Libertarian Party) and 2004-40 (Libertarian Party of Maryland). This determination considers whether the organization, by virtue of its bylaws, is responsible for the day-to-day operations of the political party at the State level, as determined by the Commission. *See* 2 U.S.C. 431(15) and 11 CFR 100.14.

The IPNY is not part of a larger national party structure. However, a State party organization need not be affiliated with any national political party organization to obtain State committee status. *See* Advisory Opinions 2000-21 (State Committee of the New York State Conservative Party) and 2000-14 (New York State Committee of the Working

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<sup>5</sup> Disclosure reports for Senator Clinton, Representative Ackerman, former Representative Kelly and Representative Slaughter appear on the Commission’s website at <http://query.nictusa.com/cgi-bin/fecimg/?C00346544>; <http://query.nictusa.com/cgi-bin/fecimg/?C00165241>; <http://query.nictusa.com/cgi-bin/fecimg/?C00294900>; and <http://query.nictusa.com/cgi-bin/fecimg/?C00213611>, respectively.

<sup>6</sup> The Commission notes that all four of the IPNY candidates also appeared on the 2006 ballot in the State of New York as candidates of other recognized political parties. Senator Clinton also appeared on the ballot as the candidate of the Democratic Party and of the Working Families Party. *See* [www.elections.state.ny.us/NYSBOE/elections/2006/general/2006\\_ussen.pdf](http://www.elections.state.ny.us/NYSBOE/elections/2006/general/2006_ussen.pdf). Similarly, Representative Ackerman, former Representative Kelly and Representative Slaughter also appeared on the ballot as Democratic or Republican candidates. *See* [www.elections.state.ny.us/NYSBOE/elections/2006/general/2006\\_cong.pdf](http://www.elections.state.ny.us/NYSBOE/elections/2006/general/2006_cong.pdf). The Commission, however, has determined that a candidate’s association with more than one political party is not relevant when considering a party committee status request. The Commission concluded that “fusion candidates may be considered when reviewing a party’s qualification for national committee status.” Advisory Opinion 1998-02 fn 5 (Reform Party USA). The Commission has reached the same conclusion when reviewing a party’s qualification for State committee status. *See, e.g.* Advisory Opinion 2000-14 fn 3 (New York State Committee of the Working Families Party). Furthermore, in Advisory Opinion 2000-14 (New York State Committee of the Working Families Party), the only identified Federal candidate of the Working Families Party was a “fusion candidate,” *i.e.*, Hillary Clinton.

Families Party). In cases where a State party is not affiliated with a national political party, the Commission has considered whether the Party's Rules "set out a comprehensive organizational structure for the Party" and "clearly identify the role of the Party" and its responsibilities in administering the day-to-day functions and operations of a political party at the State level. *See id.*

The Commission concludes that the IPNY's Rules establish a comprehensive organizational structure for the Party from the statewide level down through various local levels, and clearly identify the role of the Party. *See* Advisory Opinions 2000-21 (State Committee of the New York State Conservative Party) and 2000-14 (New York State Committee of the Working Families Party).

As noted above, the Rules of the IPNY detail the organizational structure for the IPNY and establish responsibilities for IPNY officials. *See* Rules, Arts. II-XI. The IPNY Rules delineate activity commensurate with the day-to-day functions and operations of a political party on a State level, and are consistent with the State party rules reviewed in previous situations where the Commission has recognized the State committee status of a political organization.

In addition, the Commission notes that pursuant to New York Election Law, the IPNY has acquired ballot status as the official Independence Party of the State of New York.

Because all elements of the definition of "State committee" have been satisfied, the Commission determines that the IPNY qualifies as a State committee of a political party under the Act and Commission regulations.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity. All of the cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

Sincerely,

(signed)  
Robert D. Lenhard  
Chairman