

## **PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS**

Members of the public may submit written comments on draft advisory opinions.

DRAFT ADVISORY OPINION 2010-22 is now available for comment. It was requested by Alexander Rabb, Esq., on behalf of Working Families Party of Connecticut, and is scheduled to be considered by the Commission at its public meeting on Thursday, October 21, 2010.

If you wish to comment on the DRAFT ADVISORY OPINION 2010-22, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand deliver or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by noon (Eastern Time) on October 20, 2010.
- 4) The Commission will generally not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

## **REQUESTOR APPEARANCES BEFORE THE COMMISSION**

The Commission has implemented a pilot program to allow advisory opinion requestors, or their counsel, to appear before the Commission to answer questions at the open meeting at which the Commission considers the draft advisory opinion. This program took effect on July 7, 2009.

**Under the program:**

- 1) A requestor has an automatic right to appear before the Commission if any public draft of the advisory opinion is made available to the requestor or requestor's counsel less than one week before the public meeting at which the advisory opinion request will be considered. Under these circumstances, no advance written notice of intent to appear is required. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).**
- 2) A requestor must provide written notice of intent to appear before the Commission if all public drafts of the advisory opinion are made available to requestor or requestor's counsel at least one week before the public meeting at which the Commission will consider the advisory opinion request. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2). The notice of intent to appear must be received by the Office of the Commission Secretary by hand delivery, email ([Secretary@fec.gov](mailto:Secretary@fec.gov)), or fax ((202) 208-3333), no later than 48 hours before the scheduled public meeting. Requestors are responsible for ensuring that the Office of the Commission Secretary receives timely notice.**
- 3) Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the Commission's technical capabilities.**
- 4) Requestors or their counsel who appear before the Commission may do so only for the limited purpose of addressing questions raised by the Commission at the public meeting. Their appearance does not guarantee that any questions will be asked.**

**FOR FURTHER INFORMATION**

Press inquiries: Judith Ingram  
Press Officer  
(202) 694-1220

Commission Secretary: Shawn Woodhead Werth  
(202) 694-1040

Comment Submission Procedure: Rosemary C. Smith  
Associate General Counsel  
(202) 694-1650

Other inquiries:

To obtain copies of documents related to 2010-22, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

**ADDRESSES**

Office of the Commission Secretary  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Office of General Counsel  
ATTN: Rosemary C. Smith, Esq.  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**AGENDA DOCUMENT NO. 10-65**



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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OCT 14 2010

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**AGENDA ITEM**

October 14, 2010

For Meeting of 10-21-10

**MEMORANDUM**

TO: The Commission

FROM: Christopher Hughey *pch*  
Acting General Counsel

Rosemary C. Smith *RCS*  
Associate General Counsel

Amy L. Rothstein *ALR*  
Assistant General Counsel

Cheryl A.F. Hemsley *ALR for CAFH*  
Attorney

Subject: Draft AO 2010-22 (Working Families Party of Connecticut)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 21, 2010.

Attachment

1 ADVISORY OPINION 2010-22

2

3 Alexander Rabb, Esq.

**DRAFT**

4 Levy Ratner, P.C.

5 Attorneys at Law

6 80 8<sup>th</sup> Avenue, 8<sup>th</sup> Floor

7 New York, NY 10011-51216

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9 Dear Mr. Rabb:

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We are responding to your advisory opinion request regarding the status of the

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Connecticut Working Families Federal PAC d/b/a Take Back Congress CT (the

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“Committee”) as a State committee of a political party under the Federal Election

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Campaign Act of 1971, as amended (the “Act”), and Commission regulations. The

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Commission concludes that the Committee qualifies as a State committee of a political

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party because: (1) the Connecticut Working Families Party (the “CT WFP”) qualifies as a

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political party; (2) the CT WFP possesses an official party structure; and (3) the

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Committee is responsible for the day-to-day operations of a political party at the State

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level.

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***Background***

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The facts presented in this advisory opinion are based on your letter received on

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September 8, 2010, and on information disclosed to the Commission and the Connecticut

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Secretary of State and publicly available on the Commission’s and the Connecticut

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Secretary of State’s websites.

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The CT WFP is not affiliated with a national political party but qualifies under

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Connecticut law as a “minor political party.” See Letter from Theodore E. Bromley,

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Office of Secretary of the State of Connecticut (attached to advisory opinion request)

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(“Connecticut Secretary of State Letter”). The organizational structure of the CT WFP is

1 set out in the CT WFP's Rules. *See* Working Families Party, Party Rules (the "Rules"),  
2 Arts. IV-IX. The Rules describe membership in and governance of the CT WFP. The  
3 CT WFP is governed by the Committee (referred to in the Rules as the State Committee)  
4 and an Executive Committee. *See* Rules, Arts. V and VI.

5 The Committee manages the CT WFP's day-to-day activities and operation. The  
6 Committee is the CT WFP's highest governing body, with the authority to convene  
7 meetings, allocate financial resources, establish committees, and endorse issues and  
8 candidates in the name of the CT WFP. *See* Rules, Art. V, Para. 1 and Art. VIII. The  
9 Committee elects an Executive Committee from its own members consisting of three co-  
10 chairs, a secretary, and a treasurer to carry on its work in the periods of time between  
11 Committee meetings. *See* Rules, Art. VI, Para. 1.

12 The CT WFP placed two candidates for the U.S. House of Representatives on the  
13 2010 Connecticut general election ballot as candidates of the CT WFP: Representative  
14 Joe Courtney (2<sup>nd</sup> District) and Representative Rosa DeLauro (3<sup>rd</sup> District). Both  
15 Representative Courtney and Representative DeLauro will be identified on the ballot as  
16 candidates of the CT WFP.<sup>1</sup> Representative Courtney and Representative DeLauro have  
17 each received contributions and made expenditures in excess of \$5,000 in their respective

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<sup>1</sup> The Commission notes that both Representative Courtney and Representative DeLauro will appear on the 2010 general election ballot as candidates of both the CT WFP and the Democratic Party. The political party identifications for Representative Courtney and Representative DeLauro on the general election ballot appears on the Connecticut's Secretary of the State website at <http://www.statemotofvote-sots.ct.gov/StatementOfVote/WebModules/ReportsLink/CLNWRRepCongView.aspx?Parameter=11/02/2010-General> (last visited October 14, 2010).

1 campaigns for the U.S. House of Representatives during the current election cycle,  
2 according to disclosure reports filed with the Commission.<sup>2</sup>

3 ***Question Presented***

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

6 ***Legal Analysis and Conclusion***

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

9 A “State committee” of a political party is an organization that, by virtue of the  
10 bylaws of a political party, is part of the official party structure and is responsible for the  
11 day-to-day operation of such political party at the State level, as determined by the  
12 Commission. 2 U.S.C. 431(15); 11 CFR 100.14(a). A “political party” is an association,  
13 committee, or organization that nominates a candidate for election to any Federal office  
14 whose name appears on the election ballot as the candidate of the association, committee,  
15 or organization. 2 U.S.C. 431(16); 11 CFR 100.15.

16 The determination as to whether a State party organization that is not affiliated  
17 with a national political party qualifies as a State committee of a political party turns on  
18 three elements: (1) the State party organization must itself qualify as a “political party”;  
19 (2) the State party organization must itself possess an official party structure; and (3) the  
20 State party organization must be responsible for the day-to-day operations of a party at  
21 the State level. *See, e.g.,* Advisory Opinions 2008-12 (Independent Party of Oregon) and

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<sup>2</sup> Disclosure reports for Representative Courtney and Representative DeLauro appear on the Commission’s website at <http://query.nictusa.com/cgi-bin/fecimg/?C00238865> and <http://query.nictusa.com/cgi-bin/fecimg/?C00410233>, respectively (last visited September 10, 2010).

1 2007-23 (Independence Party of New York). The Commission addresses each of these  
2 three elements in turn.

3 *(1) Qualification of the CT WFP as a Political Party*

4 To qualify as a political party, the CT WFP must have at least one candidate for  
5 Federal office whose name is on the ballot as a candidate of the CT WFP. *See id.* An  
6 individual qualifies as a candidate for Federal office if the individual, the individual's  
7 authorized committee, or other persons authorized by the individual, have received  
8 contributions aggregating in excess of \$5,000 or have made expenditures aggregating in  
9 excess of \$5,000. *See* 2 U.S.C. 431(2); 11 CFR 100.3(a)(1). Representative Courtney  
10 and Representative DeLauro have each received contributions and made expenditures in  
11 excess of \$5,000 in their respective campaigns for the U.S. House of Representatives  
12 during the current election cycle; thus, both Representative Courtney and Representative  
13 DeLauro qualify as Federal candidates under the Act and Commission regulations.  
14 Additionally, both candidates will appear on the November 2010 Connecticut general  
15 election ballot as candidates of CT WFP.<sup>3</sup> Accordingly, the CT WFP qualifies as a  
16 political party. *See* Advisory Opinions 2010-13 (Libertarian Party of Florida), 2008-12  
17 (Independent Party of Oregon), and 2000-14 (New York State Committee of the Working  
18 Families Party). Further, a letter from the office of the Connecticut Secretary of the State  
19 evidences the CT WFP's status as a minor political party under Connecticut law. *See*  
20 Connecticut Secretary of State Letter.

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<sup>3</sup> As noted previously, both Representative Courtney and Representative DeLauro also will appear on the 2010 general election ballot as candidates of the Democratic Party. In previous advisory opinions, the Commission has concluded that a candidate's association with more than one political party is not relevant when reviewing a party's qualification for State committee status. *See, e.g.,* Advisory Opinion 2007-23 (Independence Party of New York) at n.6 and advisory opinions cited therein.

1 *(2) Official Party Structure of the CT WFP*

2           The CT WFP is not affiliated with any national political party, but such affiliation  
3 is not needed to obtain State party committee status. *See, e.g.* Advisory Opinions  
4 2008-12 (Independent Party of Oregon), 2007-23 (Independence Party of New York),  
5 2000-21 (New York State Conservative Party), and 2000-14 (New York State Committee  
6 of the Working Families Party). In cases involving a State party organization that is not  
7 affiliated with a national political party, the State party organization must itself possess  
8 an official party structure. *See* Advisory Opinions 2008-12 (Independent Party of  
9 Oregon) and 2007-23 (Independence Party of New York). The Commission concludes  
10 that the CT WFP possesses an official party structure because: (1) the CT WFP's Rules  
11 establish an official party structure; (2) the CT WFP has qualified for status as a minor  
12 political party under Connecticut law<sup>4</sup> and, as such, has placed two candidates on its party  
13 line on the 2010 general election ballot. Accordingly, the CT WFP satisfies the second  
14 element required for the Committee to qualify as a State committee of a political party.

15 *(3) Responsibility of the Committee for Day-to-Day Operations of the CT WFP*

16           The third element in determining whether a State party organization is a State  
17 committee of a political party is whether the organization, by virtue of its bylaws or by  
18 operation of State law, is responsible for the day-to-day operations of a political party at  
19 the State level. *See* 2 U.S.C. 431(15); 11 CFR 100.14(a); *see also* Advisory Opinions  
20 2008-12 (Independent Party of Oregon) and 2007-23 (Independence Party of New York).

21           The Rules of the CT WFP clearly identify the role of the Committee and its  
22 responsibilities for the day-to-day functions and operations of the CT WFP at the State

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<sup>4</sup> *See* Connecticut Secretary of State Letter.

1 level. *See* Rules, Arts. IV - IX. The Committee's responsibility for the operations of the  
2 CT WFP at the State level is commensurate with the responsibility of other State party  
3 committees that the Commission has previously recognized. *See, e.g.*, Advisory Opinion  
4 2008-12 (Independent Party of Oregon). Thus, the Committee is responsible for the day-  
5 to-day operations of a political party at the State level.

6 Because all three elements of the definition of "State committee" are satisfied, the  
7 Commission determines that the Committee qualifies as a State committee of a political  
8 party under the Act and Commission regulations.

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

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1 law, including, but not limited to, statutes, regulations, advisory opinions and case law.

2 The cited advisory opinions are available on the Commission's website at

3 <http://saos.nictusa.com/saos/searchao>.

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On behalf of the Commission,

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Matthew S. Petersen

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Chairman