

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

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

DRAFTS A and B of ADVISORY OPINION 2012-38 are now available for comment. They were requested by Michael Krinsky, Esq., and Lindsey Frank, Esq., on behalf of the Socialist Workers Party, and are scheduled to be considered by the Commission at its public meeting on February 14, 2013. The meeting will begin at 10:00 a.m. and will be held in the 9<sup>th</sup> Floor Hearing Room at the Federal Election Commission, 999 E Street, NW, Washington, DC. Individuals who plan to attend the public meeting and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Commission Secretary, at (202) 694-1040, at least 72 hours prior to the meeting date.

If you wish to comment on DRAFTS A and B of ADVISORY OPINION 2012-38, 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 delivery 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 February 13, 2012.
- 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@fee.gov](mailto:Secretary@fee.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: Kevin Deeley  
Acting Associate General Counsel  
(202) 694-1650

Other inquiries:

To obtain copies of documents related to Advisory Opinion 2012-38, 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: Kevin Deeley, Esq.  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2013 FEB -7 P 5:40

February 7, 2013

**AGENDA ITEM**

**MEMORANDUM**

TO: The Commission

For Meeting of 2-14-13

FROM: Anthony Herman  
General Counsel

*AH by LJS*

Kevin Deeley <sup>920</sup>  
Acting Associate General Counsel

Robert M. Knop *RMK by NES*  
Assistant General Counsel

Cheryl Hemsley *CH*  
Attorney

Esther Heiden *EH*  
Attorney

Subject: AO 2012-38 (Socialist Workers Party) (Drafts A and B)

Attached are proposed drafts of the subject advisory opinion. We have been asked to have these drafts placed on the Open Session agenda for February 14, 2013.

Attachment

1 ADVISORY OPINION 2012-38

2  
3 Michael Krinsky, Esq.  
4 Lindsey Frank, Esq.  
5 Rabinowitz, Bnudin, Standard, Krinsky & Lieberman, P.C.  
6 45 Broadway, Suite 1700  
7 New York, NY 10066-3791

DRAFT A

8  
9 Dear Messrs. Krinsky and Frank:

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

18 The request chronicles a long history of systematic harassment of the SWP, including  
19 evidence of some harassment after 2009. The governmental interest in obtaining identifying  
20 information from the SWP of contributors and recipients of expenditures is diminished because,  
21 as a minor party, the possibility of an SWP candidate winning or influencing an election is  
22 remote. The Commission has decided to renew the partial reporting exemption until December  
23 31, 2015.

## 24 **Background**

### 25 *A. Partial Exemption History*

26 The SWP was first granted a partial reporting exemption in a consent decree that resolved  
27 *Socialist Workers 1974 National Campaign Committee v. Federal Election Commission*, Civil

1 Action No. 74-1338 (D.D.C. 1979). In that case, the SWP alleged that certain disclosure  
2 provisions of the Act deprived the SWP and its supporters of their First Amendment rights  
3 because of the likelihood of harassment resulting from mandatory disclosure of contributors and  
4 vendors. Additionally, the SWP alleged that the governmental interest in obtaining identifying  
5 information of contributors and recipients of expenditures was diminished because, as a minor  
6 party, the possibility of an SWP candidate winning or influencing an election was remote. The  
7 consent decree exempted the SWP from the Act's requirements to disclose: 1) the names,  
8 addresses, occupations, and principal places of business of contributors to the SWP committees;  
9 2) other political committees or candidates to which or to whom the SWP committees made  
10 contributions; 3) lenders, endorsers, or guarantors of loans to the SWP committees; and 4)  
11 persons to whom the SWP committees made expenditures. The consent decree, however,  
12 required the SWP to maintain records in accordance with the Act and to file reports in a timely  
13 manner. On July 24, 1985, the court approved an updated settlement agreement with these  
14 requirements and a partial reporting exemption.<sup>1</sup>

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

20 In response to the SWP's subsequent 1996, 2002, and 2008 requests, the Commission  
21 again issued advisory opinions renewing these partial reporting exemptions. See Advisory

---

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

1 Opinion 1996-46 (SWP); Advisory Opinion 2003-02 (SWP); Advisory Opinion 2009-01 (SWP).  
2 The current exemptions apply to reports covering committee activity up to December 31, 2012.<sup>2</sup>  
3 See Advisory Opinion 2009-01 (SWP).

4 B. *Factual Update*

5 1. Electoral Success

6 Despite proffering a presidential candidate in every election since 1948 and numerous  
7 other candidates for Federal, State and local offices, no SWP candidate has ever been elected to  
8 public office in a partisan election. Data from elections in 2009-2012 show very low vote totals  
9 for SWP presidential and other Federal candidates. The information presented, as well as  
10 publicly available information, shows that no SWP candidate has come close to winning a  
11 Federal election in the three years since the last exemption was granted. SWP candidates for  
12 President received only 10,791 votes in 2004, 9,827 votes (not including write-ins) in 2008, and  
13 3,509 votes in 2012. Further, in 2010 and 2011, none of the three SWP candidates on the ballot  
14 for U.S House of Representatives received more than 6,300 votes. The SWP has not had any  
15 candidates on the ballot for the U.S. Senate since 2009. Further, no SWP candidate won a state  
16 or local election during the three-year period. See Declaration of Chris Hoepfner, Exhibit D, at  
17 1, 4-5 and Supplement to the Request.

18 2. Financial Activity

19 Information presented in the request and available on the Commission's website indicates  
20 a very low level of financial activity by SWP political committees. As of October 20, 2012, the

---

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

1 date of the Declaration submitted by the SWP, only 118 people made contributions to the SWP  
2 National Committee in 2012, and, in 2008, only 243 people contributed to the Committee. *See*  
3 Declaration of Lea Sherman, Exhibit E, at 1. Commission records reflect that no person  
4 contributed over \$200 per calendar year to the Committee during the three-year period from  
5 2009 to 2011. Year-end reports filed with the Commission indicate that the SWP received  
6 contributions totaling \$1,222 from 2009 to 2011, and the Committee's 2012 year-end report  
7 shows that it had 11 contributors each giving in excess of \$200 in 2012, when the Committee  
8 raised approximately \$16,000 in total contributions. The SWP has not received any "bundled"  
9 contributions that would require disclosure under the Honest Leadership and Open Government  
10 Act (2 U.S.C. 434(i)), and it does not foresee receiving any such contributions. *See* Declaration  
11 of Lea Sherman, Exhibit E, at 1.

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

1           **3. Harassment**

2           **The SWP's current request includes 57 exhibits attesting to some 44 incidents of**  
3           **harassment or intimidation and 12 instances where potential SWP supporters were fearful.<sup>3</sup> Each**  
4           **of the 57 exhibits includes at least one sworn statement from an individual associated with the**  
5           **SWP, sometimes accompanied by news accounts, correspondence received, or other materials.**

6           **The statements were made by SWP members, candidates, campaign workers, or**  
7           **supporters from different regions of the United States and generally fall into five categories: (1)**  
8           **statements attesting to the fear that potential SWP supporters have of being identified as an SWP**  
9           **supporter; (2) statements attesting to firings and alleged workplace intimidation; (3) statements**  
10           **and materials attesting to alleged hostility from private parties to SWP activities; (4) statements**  
11           **and materials attesting to alleged hostility from local government law enforcement sources to**  
12           **SWP activities; and (5) a statement attesting to other alleged governmental information gathering**  
13           **and sharing. The requestor states that this compilation of incidents "is not meant to be**  
14           **exhaustive, as acts of intimidation and harassment against the SWP and its supporters are**  
15           **frequent enough that they often go unreported to any central body."**

16                   **a. Historical and Current Government Harassment Causing Fears Among**  
17                   **Potential SWP Supporters**

18           **In its request, the SWP summarizes the history of harassment and disruption by**  
19           **government entities that lasted through the 1970s, and that was the subject of lawsuits as late as**  
20           **the 1980's.<sup>4</sup> Additionally, the SWP cites recent changes to certain government guidelines and**

---

<sup>3</sup> Exhibits 1 and 2 are identical, accordingly the 57 exhibits show 56 incidents.

<sup>4</sup> Advisory Opinion 1990-13 (SWP) described FBI investigative activities between 1941 and 1976 that included the extensive use of informants to gather information on SWP activities and on the personal lives of SWP members,

1 programs for obtaining and maintaining information on U.S. citizens and residents to support the  
2 reasonableness of the fear expressed by several potential supporters.<sup>5</sup>

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

9 The SWP's request contains 12 statements by SWP candidates and campaign workers  
10 relating to the concerns expressed by potential SWP supporters regarding public identification  
11 with the SWP. These include statements by campaign supporters and workers describing their  
12 experiences while campaigning and talking with potential supporters, selling subscriptions to the  
13 SWP's periodical, *The Militant*, and working to get petition signatures and electors. Individuals  
14 have expressed fear that getting involved or placing their names and addresses on subscription  
15 lists would result in further scrutiny of them by governmental authorities such as the FBI, the  
16 Department of Homeland Security, the Department of Housing and Urban Development (fear of

---

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

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

1 losing housing), and immigration authorities (when applying for citizenship and even when they  
2 were legal residents). In addition some supporters were fearful of being placed on a  
3 “government list.” *See Exhibits 46-57.*

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

5 In addition to the generalized fear of increased government surveillance discussed above,  
6 the SWP raises a specific incident of what it believes is “FBI Surveillance and Information  
7 Sharing.” The incident occurred when the SWP candidate for Vice President was stopped and  
8 questioned for over two hours by Canadian immigration authorities. The candidate states that,  
9 within seconds of scanning her passport, the Canadian immigration officer was able to review on  
10 her computer a “sizeable dossier” concerning the candidate and her prior activities. The SWP  
11 asserts that the only possible explanation for this is that the U.S. government has been gathering  
12 information and monitoring the SWP and its members and sharing this information with the  
13 government of Canada, and possibly other countries. *See Exhibits R, 15.*

14 **c. Firings and Alleged Workplace Intimidation**

15 Two SWP candidates and one supporter state that their employment was terminated or  
16 that they were laid off and not rehired due to their SWP candidacies and activities. One  
17 candidate states that he was fired because of ““conversations”” and ““discussions”” the employee  
18 was ““having with other employees”” concerning his candidacy and the SWP ticket. *See Exhibit*  
19 *4 (quoting his employer).* The other candidate states that she was fired in 2010 despite her good  
20 work reports. She also states that she was laid off from a different job with other workers during  
21 a 2009 work slowdown, but unlike other workers was not rehired. *See Exhibit 1.* Finally, a  
22 supporter states that he was fired after going to an establishment frequented by company

1 managers to attend a farewell party for a fellow employee who was an SWP candidate. *See*  
2 Exhibit 3.

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

8 d. Hostility from private parties

9 The SWP submitted 22 exhibits consisting of attestations as to incidents of harassment,  
10 threats, or violence by private individuals or businesses. These exhibits are described below.

11 Two exhibits describe face-to-face threats of harm or violence made against SWP  
12 workers, property, or materials. According to one exhibit, a person grabbed the clipboard of an  
13 SWP supporter collecting signatures on a petition and said that he and his friends would “take  
14 care of you,” and then followed the supporters to their car. The SWP supporters believed that  
15 they would be “subjected to physical assault” if they did not leave. According to the second  
16 exhibit, a man shook the locked SWP headquarters door during an organization meeting and  
17 yelled, “If Obama wins I’m going to kill every one of you commie [expletive].” *See* Exhibits 11  
18 - 12.

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

---

<sup>6</sup> In a third exhibit, a pro-choice SWP candidate for local office stated that she received at her residence a postcard

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

10           e. Relations with local law enforcement authorities

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

19           For example, after looking through the campaign literature, police officers in  
20 Philadelphia, Pennsylvania purportedly warned the SWP workers that “We can put you on the  
21 no-fly list. Report you to Homeland Security.” The police officers temporarily took the

---

containing a graphic anti-abortion message. Although the exhibit says that the candidate made the statement in support of SWP’s request for the exemption, there is no allegation that the statement was because the candidate represents the SWP, rather than her position as a pro-choice candidate. Exhibit 14.

1 workers' identification cards, remained parked, and watched until the workers ended their  
2 campaigning.

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

#### 11 **Question Presented**

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

#### 15 **I. Legal Analysis and Conclusions**

16 Yes, the SWP, the Socialist Workers National Campaign Committee, other SWP party  
17 committees, and authorized committees of candidates of the SWP qualify for an extension of  
18 their partial reporting exemption for reports covering activity up to December 31, 2015.

19 The Act requires political committees to file reports with the Commission that identify  
20 individuals and other persons who make contributions over \$200 during the calendar year or  
21 election cycle (depending on the type of committee), or who come within various other  
22 disclosure categories. 2 U.S.C. 434(b)(3), (5), (6); see also 2 U.S.C. 431(13). The Supreme

1 Court has found that under certain circumstances, the Act's disclosure requirements are  
2 unconstitutional as applied to a minor party because the threat to the exercise of First  
3 Amendment rights resulting from disclosure outweighs the government's relatively insubstantial  
4 interest in disclosure. *Buckley v. Valeo*, 424 U.S. 1, 71-72 (1976). The Court recognized that  
5 "[t]hese movements are less likely to have a sound financial base and thus are more vulnerable  
6 to falloffs in contributions. In some instances fears of reprisal may deter contributions to the  
7 point where the movement cannot survive." *Id.* at 71.

8 Because "[m]inor parties must be allowed sufficient flexibility in the proof of injury to  
9 assure a fair consideration of their claim" for a reporting exemption, "[t]he evidence offered  
10 need show only a reasonable probability that the compelled disclosure of a party's contributors'  
11 names will subject them to threats, harassment, or reprisals from either Government officials or  
12 private parties." *Id.* at 74. "The proof may include, for example, specific evidence of past or  
13 present harassment of members due to their associational ties, or of harassment directed against  
14 the organization itself. A pattern of threats or specific manifestations of public hostility may be  
15 sufficient." *Id.* at 74.

16 Following this case law, the Commission must first determine whether the SWP  
17 continues to maintain its status as a minor party. *See Buckley*, 424 U.S. at 68-74. Next, the  
18 Commission must weigh three factors: (1) the history of violence or harassment, or threats of  
19 violence or harassment, directed at the SWP or its supporters by governmental authorities,  
20 including law enforcement agencies, or by private parties; (2) evidence of continuing violence,  
21 harassment, or threats directed at the SWP or its supporters since the prior exemption was  
22 granted; and, balanced against the first two factors, (3) the governmental interest in obtaining

1 identifying information of contributors and recipients of expenditures. The Commission has  
2 decided previously that, where the impact of the activities of the SWP and its supporters on  
3 Federal elections is minimal because the possibility of an SWP candidate winning an election is  
4 remote, the government's interest in obtaining such information is lessened. Advisory Opinion  
5 2009-01 (SWP); *see also Hall-Tyner Election Campaign Comm.*, 678 F.2d at 422.

6 *A. Minor Party*

7 As evidenced by the low vote totals for SWP candidates, the lack of success in ballot  
8 access, and the small total amounts of contributions to SWP committees, the Commission  
9 concludes that the SWP continues to be a minor party that is out of the mainstream. The SWP is  
10 a "small and unpopular political party." *McArthur v. Smith*, 716 F. Supp. 592, 593 (S.D. Fla.  
11 1989); *cf. also ProtectMarriage.com v. Bowen*, 830 F. Supp. 2d 914, 928 (E.D. Cal. 2011); *FEC*  
12 *v. Hall-Tyner Election Campaign Comm.*, 678 F.2d 416, 420 (2d Cir. 1982) (expressing concern  
13 regarding "contributors to fringe organizations" who may "fear that their support of an unpopular  
14 ideology will be revealed").

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

16 As explained above, there is a long history of threats, violence, and harassment against  
17 the SWP and its supporters by Federal and local law enforcement agencies and private parties.  
18 The Commission has consistently viewed the SWP's requests for exemption from the Act's  
19 reporting requirements in light of this "long history of governmental harassment of the SWP."  
20 *See, e.g.*, Advisory Opinion 2009-01 (SWP). Courts have detailed this history. *See generally*  
21 *Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357 (S.D.N.Y. 1986); *Socialist*  
22 *Workers Party v. Attorney General*, 666 F. Supp. 621 (S.D.N.Y. 1987). The Supreme Court has

1 previously referred to “the substantial evidence of both governmental and private hostility  
2 toward and harassment of SWP members and supporters.” *Brown v. Socialist Workers '74*  
3 *Campaign Committee (Ohio)*, 459 U.S. 87, 98-99 (1982) (quoting the underlying district court  
4 opinion).

5 To be sure, the importance of the past history of harassment has diminished as those acts  
6 and incidents recede further into the past. FBI surveillance of the SWP lasted for 25 years and  
7 ended around 1976, nearly 40 years ago. *Brown*, 459 U.S. at 99. The SWP has provided the  
8 Commission with accounts of serious incidents of harassment by private parties over the last  
9 several decades, but those have declined over time. See Advisory Opinion 2009-01 (Socialist  
10 Workers Party) (describing the alleged incidents of violence and harassment from 2003-2008 as  
11 “appear[ing] to be of lesser magnitude than those referenced in court opinions and prior AOs  
12 granting the exemption”).

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

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

19 A review of the information presented in connection with this request indicates that the  
20 SWP and persons associated with it have likely experienced harassment from private sources  
21 from the end of 2009 to the present. Although some of the alleged incidents of harassment may  
22 seem minor or subject to differing interpretations, there are a number of examples, such as

1 firings and instances of workplace intimidation, as well as verbal threats and harassment, that  
2 legitimately raise concern by those associated with the SWP, particularly when such examples  
3 are taken together.<sup>7</sup> Considering that these incidents occurred over a three-year span, there are  
4 relatively more of them on a per-year basis than incidents that took place during the six-year  
5 period before the Commission when it rendered Advisory Opinion 2009-01 (Socialist Workers  
6 Party).

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

19 There are also allegations of continuing harassment and hostility by local police.  
20 Although less frequent, the evidence presented suggests that harassment of the SWP by other

---

<sup>7</sup> Some of the SWP's alleged incidents merely involve private parties expressing heated disagreement with the SWP's positions. Such episodes are "typical of any controversial campaign," and "do not necessarily rise to the level of 'harassment' or 'reprisals.'" *ProtectMarriage.com*, 830 F. Supp. 2d at 934; see also Advisory Opinion 2009-01 (Socialist Workers Party) (noting that "insulting messages containing harsh language" are "not out of the ordinary experience of campaigns today").

1 governmental entities since 1990 still occurs. Although “[it [wa]s not certain that animus against  
2 the SWP was the motivating factor” in some situations when local police officers prevented  
3 pamphlet distribution, Advisory Opinion 2009-01 (Socialist Workers Party), at 9, the SWP has  
4 submitted evidence of two instances of alleged disparate treatment as between SWP workers and  
5 the workers of other organizations undertaking the same activity nearby. *See Exhibits 18 - 19.*

6 The amount and nature of harassment must be analyzed relative to the size of the party or  
7 the number of members. *See Brown*, 459 at 92. The number of contributors to the SWP  
8 provides some indication about the number of its supporters. According to SWP’s request, only  
9 118 people contributed to the committee in 2012, even fewer than the 243 people who had  
10 contributed to the committee in 2008. Relative to the apparently small number of people who  
11 support the organization, the four incidents of alleged terminations, 45 incidents of alleged  
12 harassment or intimidation, and 12 incidents of fears expressed by potential SWP supporters  
13 represent a large number of examples of harassment or fear of harassment.

14 In addition, the long history of Federal and local governmental harassment continues to  
15 have some present-day chilling effect despite the absence of recent alleged Federal governmental  
16 harassment. For example, a number of SWP personnel filed sworn statements that individuals  
17 had been reluctant to sign petitions or subscribe to SWP literature for fear of scrutiny by  
18 governmental authorities.

19 The evidence presented does not need to demonstrate to a certainty that harassment  
20 would inexorably follow a revocation of the partial reporting exemption. For a minor party like  
21 the SWP, there need be only “a reasonable probability that compelled disclosure” would result in  
22 “threats, harassment, or reprisals from either Government officials or private parties.” *Buckley*,

1 424 U.S. at 74. Based on consideration of the evidence from 2009 through 2012, the  
2 Commission concludes that there is a reasonable probability that SWP contributors and vendors  
3 doing business with the SWP and committees supporting SWP candidates would face threats,  
4 harassment, or reprisals if their names and indentifying information were disclosed.

5 *D. The Government's Informational Interest*

6 As discussed above, the Commission must weigh against the danger of violence or  
7 harassment, or threata of violence or harassment, directed at the SWP or its supporters the  
8 governmental interest in obtaining identifying information of contributors and recipients of  
9 expenditures. *See Brown*, 459 U.S. at 92; *ProtectMarriage.com*, 830 F. Supp. 2d at 930 (noting  
10 that the disclosure exception is “not for the majority, but for those groups in which the  
11 government has a diminished interest.”)

12 Information provided by the SWP indicates that the SWP and committees supporting its  
13 candidates receive very small total amounts of contributions and very low vote totals in partisan  
14 elections. The SWP received only \$1,222 from 2009 through 2011, and only approximately  
15 \$15,500 in 2012. This suggests that the activities of the SWP, its candidates, and committees  
16 supporting its candidates have little, if any, inpact on Federal elections. The governmental  
17 interest in disclosure of donors to a political party raising in total an average of less than \$10,000  
18 per year is reduced substantially compared to more popular, mainstream parties. *Hall-Tyner*,  
19 678 F.2d at 421. Moreover, such a party rarely has “a firm financial foundation,” meaning that a  
20 “decrease in contributions may threaten [its] very existence.” *Id.* at 420. That appears to be the  
21 case for the SWP.

1           The disclosure provisions of the Act aim to deter corruption and the appearance of  
2 corruption, but “the governmental interest in disclosure is diminished when the contribution in  
3 question is made to a minor party with little chance of winning an election,” or where  
4 “contributions to a minor party . . . are concerned, for it is less likely that the candidate will be  
5 victorious.” *Buckley*, 424 U.S. at 67, 70. “[A] minor party sometimes can play a significant role  
6 in an election. Even when a minor-party candidate has little or no chance of winning, he may be  
7 encouraged by major-party interests in order to divert votes from other major-party contenders.”  
8 *Id.*; *see, e.g., U.S. v. Goland*, 959 F.2d 1449 (9th Cir. 1992). However, not only does the SWP  
9 have “little chance of winning an election,” there is also no evidence that the SWP has been or  
10 could be used as a vehicle for diversion.

11           *E. Conclusion*

12           The governmental interest in obtaining the names, addresses, and other identifying  
13 information of SWP contributors and vendors doing business with the SWP committees in  
14 connection with Federal elections remains very low and continues to be outweighed by the  
15 reasonable probability of threats, harassment, or reprisals resulting from such disclosure. The  
16 SWP has experienced a decline in episodes of harassment of serious magnitude, but has  
17 submitted some credible evidence of threats and intimidation. When weighed together with the  
18 very small amounts of money raised and the significant past history, the recent evidence of  
19 harassment thus satisfies the requirement of demonstrating a reasonable probability of  
20 harassment, albeit barely. Should the SWP have substantially increased success in raising funds,  
21 or were there evidence of its candidates being used as a diversion by a supporter of a major party

1 candidate, however, the partial reporting exemption would likely not be available on a similar  
2 record of recent harassment. For now, we conclude that the partial exemption is proper.

3 \* \* \* \* \*

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

10 The partial reporting exemption will apply to the following sections of the Act: 2 U.S.C.  
11 434(b)(3) (receipts of a political committee); 434(b)(5) and (6) (expenditures and disbursements  
12 by a political committee); 434(e) (reporting by political committees); 434(f) (electioneering  
13 communication disclosure); and 434(g) (independent expenditure reporting).<sup>9</sup> Please note that  
14 the SWP and the committees supporting SWP candidates must still comply with all other

---

<sup>8</sup> Each political committee entitled to the exemption must assign a code number to each individual or entity from whom it receives one or more contributions aggregating in excess of \$200 in a calendar year (if an unauthorized committee) or in excess of \$200 during the election cycle (if an authorized committee). That code number must be included in FEC reports filed by each committee in the same manner that full contributor identification would otherwise be disclosed. Consistent with the requirement that the committees comply with the recordkeeping provisions of the Act, the committee's records must correlate each code number with the name and other identifying data of the contributor who is represented by that code.

<sup>9</sup> If an SWP committee does not qualify as a political committee and makes an electioneering communication that must be reported under 2 U.S.C. 434(f), it must disclose the name of the broadcasting station even though it would be exempt from disclosing names and addresses of donors and all other vendors. Additionally, the SWP's request concerns the granting of the partial exemption to both SWP party and candidate committees. The partial exemption does not extend to individual SWP supporters who, as individuals, engage in activity that might require them to file reports of their own, for example, the filing of reports of electioneering communications under 2 U.S.C. 434(f) and independent expenditures under 2 U.S.C. 434(g).

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

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

16 In *summa*, based on the record presented, the Commission grants this partial reporting  
17 exemption to reports covering the next three years, *i.e.*, through December 31, 2015. *See*  
18 Advisory Opinion 2009-01 (explaining three-year extension). At least 60 days prior to  
19 December 31, 2015, the SWP may submit a new advisory opinion request seeking a renewal of  
20 the exemption. If a request is submitted, the Commission will consider the factual information  
21 then presented as to harassment after December 31, 2012, or the lack thereof, in making a  
22 decision regarding renewal.

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

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

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

4 On behalf of the Commission,

5

6 Ellen L. Weintraub  
7 Chair

8

1 ADVISORY OPINION 2012-38

2  
3 Michael Krinsky, Esq.

4 Lindsey Frank, Esq.

5 Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.

**DRAFT B**

6 45 Broadway, Suite 1700

7 New York, NY 10006-3791

8  
9 Dear Messrs. Krinsky and Frank:

10 We are responding to your advisory opinion request, on behalf of the Socialist Workers  
11 Party, the Socialist Workers National Campaign Committee, other Socialist Workers Party  
12 committees, and authorized committees of Federal candidates of the Socialist Workers Party  
13 (collectively the "SWP" or the "SWP committees"), concerning the application of the Federal  
14 Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the  
15 continuation of a partial reporting exemption for the SWP. The facts presented in this advisory  
16 opinion are based on your letters received on November 8, and your email received on  
17 November 30, 2012, as well as publicly available materials. The information relied upon by  
18 SWP in its request regarding harassment since the last partial reporting exemption was granted is  
19 insufficient to show a reasonable probability that the disclosure of the SWP's contributors or  
20 vendors names will subject them to threats, harassment, or reprisals from either government  
21 officials or private parties.<sup>1</sup> Moreover, SWP has presented insufficient information to support a  
22 finding that any of the 11 individuals who made contributions to SWP over the last four years  
23 that would have otherwise been subject to itemized disclosure, would refrain from supporting  
24 SWP in the future absent an extension of the partial disclosure exemption. Likewise, SWP has  
25 presented insufficient information to support a conclusion that any of the 17 vendors to whom

---

<sup>1</sup> See *Buckley v. Valeo*, 424 U.S. 1, 71-72 (1976) (the Supreme Court has found that the Act's reporting requirements are unconstitutional as applied to a minor party when there is "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.")

1 SWP made disbursements over the last four years would refrain from engaging in future business  
2 with SWP without the exemption. Accordingly, and for the reasons set forth below, the  
3 Commission declines to extend SWP's partial reporting exemption.

#### 4 **Background**

##### 5 *A. Partial Exemption History*

6 The SWP was first granted a partial reporting exemption in a consent decree that resolved  
7 *Socialist Workers 1974 National Campaign Committee v. Federal Election Commission*, Civil  
8 Action No. 74-1338 (D.D.C. 1979). In that case, the SWP alleged that certain disclosure  
9 provisions of the Act deprived the SWP and its supporters of their First Amendment rights  
10 because of the likelihood of harassment resulting from mandatory disclosure of contributors and  
11 vendors. Additionally, the SWP alleged that the governmental interest in obtaining identifying  
12 information of contributors and recipients of expenditures was diminished because, as a minor  
13 party, the possibility of an SWP candidate winning or influencing an election was remote. The  
14 consent decree exempted the SWP from the Act's requirements to disclose: 1) the names,  
15 addresses, occupations, and principal places of business of contributors to the SWP committees;  
16 2) other political committees or candidates to which or to whom the SWP committees made  
17 contributions; 3) lenders, endorsers, or guarantors of loans to the SWP committees; and 4)  
18 persons to whom the SWP committees made expenditures. The consent decree, however,  
19 required the SWP to maintain records in accordance with the Act and to file reports in a timely  
20 manner. On July 24, 1985, the court approved an updated settlement agreement with these  
21 requirements and partial reporting exemption.<sup>2</sup>

---

<sup>2</sup> The 1985 agreement also exempted the SWP from reporting the identification of persons providing rebates,

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

6           In response to the SWP's subsequent 1996, 2002, and 2008 requests, the Commission  
7 again issued advisory opinions renewing these partial reporting exemptions. *See* Advisory  
8 Opinion 1996-46 (SWP); Advisory Opinion 2003-02 (SWP); Advisory Opinion 2009-01 (SWP).  
9 The current exemptions apply to reports covering committee activity up to December 31, 2012.<sup>3</sup>  
10 *See* Advisory Opinion 2009-01 (SWP).

## 11           B. *Factual Update*

### 12           1. Electoral Success

13           Despite proffering a presidential candidate in every election since 1948 and numerous  
14 other candidates for Federal, State and local offices, no SWP candidate has ever been elected to  
15 public office in a partisan election. Data from elections in 2009-2012 show very low vote totals  
16 for SWP presidential and other Federal candidates. The information presented, as well as  
17 publicly available information, shows that no SWP candidate has come close to winning a  
18 Federal election in the three years since the last exemption was granted. SWP candidates for  
19 President received only 10,791 votes in 2004, 9,827 votes (not including write-ins) in 2008, and

---

refunds or other offsets to operating expenditures, and persons providing any dividend, interest, or other receipt.

<sup>3</sup> Advisory Opinion 2009-01(SWP) specified that no later than 60 days prior to that date, the SWP could submit a new advisory opinion request seeking another renewal of the partial exemption. On October 31, 2012, the Commission granted an extension of the deadline for applying for a renewal of the partial reporting exemption to November 9 due to difficulties SWP counsel experienced in the wake of Hurricane Sandy. A complete Advisory Opinion Request was received on November 8, 2012.

1 3,509 votes in 2012. Further, in 2010 and 2011, none of the three SWP candidates on the ballot  
2 for U.S House of Representatives received more than 6,300 votes. The SWP has not had any  
3 candidates on the ballot for the U.S. Senate since 2009. Further, no SWP candidate won a state  
4 or local election during the three-year period. *See* Declaration of Chris Hoepfner, Exhibit D, at  
5 1, 4-5 and Supplement to the Request.

6 2. Financial Activity

7 Information presented in the request and available on the Commission's website indicates  
8 a very low level of financial activity by SWP political committees. As of October 20, 2012, the  
9 date of the Declaration submitted by the SWP, only 118 people made contributions to the SWP  
10 National Committee in 2012, and, in 2008, only 243 people contributed to the Committee. *See*  
11 Declaration of Lea Sherman, Exhibit E, at 1. Commission records reflect that no person  
12 contributed over \$200 per calendar year to the Committee during the three-year period from  
13 2009 to 2011. Year-end reports filed with the Commission indicate that the SWP received  
14 contributions totaling \$1,222 from 2009 to 2011, and the Committee's 2012 year-end report  
15 shows that it had 11 contributors each giving in excess of \$200 in 2012, when the Committee  
16 raised approximately \$16,000 in total contributions. The SWP has not received any "bundled"  
17 contributions that would require disclosure under the Honest Leadership and Open Government  
18 Act (2 U.S.C. 434(i)), and it does not foresee receiving any such contributions. *See* Declaration  
19 of Lea Sherman, Exhibit E, at 1.

20 Unlike committees of other minor parties, the SWP National Campaign Committee has  
21 never applied or qualified for national committee status. *See* 2 U.S.C 431(14), 11 CFR 100.13;  
22 *cf.* Advisory Opinion 2001-13 (Green Party of the United States); Advisory Opinion 1998-2

1 (Reform Party USA); Advisory Opinion 1995-16 (U.S. Taxpayers Party). According to  
2 Commission records, no SWP party committee other than the National Campaign Committee  
3 was registered with the Commission during the 2008 and 2010 election cycles and only two  
4 other SWP party committees, both State committees, were registered during the 2004 cycle.  
5 During the 2012 election cycle, no authorized committee of any SWP candidate was registered  
6 with the Commission.

7 3. Harassment

8 The SWP's current request includes 57 exhibits attesting to some 44 incidents of  
9 harassment or intimidation and 12 instances where potential SWP supporters were fearful.<sup>4</sup> Each  
10 of the 57 exhibits includes at least one sworn statement from an individual associated with the  
11 SWP, sometimes accompanied by news accounts, correspondence received, or other materials.

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

---

<sup>4</sup> Exhibits 1 and 2 are identical, accordingly the 57 exhibits show 56 incidents.

1                   a. Historical and Current Government Harassment Causing Fears Among  
2                   Potential SWP Supporters

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

8                   The SWP argues that, along with the lengthy history of governmental harassment and  
9 disruption that ended prior to 1990, these recent changes and reported increases in government  
10 surveillance, including surveillance of certain domestic advocacy groups as reported in a  
11 September 2010 report by the Department of Justice's Inspector General regarding surveillance  
12 of groups such as People for the Ethical Treatment of Animals, Greenpeace, the Catholic Worker  
13 Movement, and the Thomas Merton Center, could cause any person interested in supporting the  
14 SWP to reasonably fear that association with the SWP may well subject them to government

---

<sup>5</sup> Advisory Opinion 1990-13 (SWP) described FBI investigative activities between 1941 and 1976 that included the extensive use of informants to gather information on SWP activities and on the personal lives of SWP members, warrantless electronic surveillance, surreptitious entry of SWP offices, other disruptive activities including attempts to embarrass SWP candidates and to foment strife within the SWP and between the SWP and others, and frequent interviews of employers and landlords of SWP members. The description of these activities was set out in the Final Report of the Special Master Judge Breitel in *Socialist Workers Party v. Attorney General*, 73 Civ. 3160 (TPG) (S.D.N.Y., Feb. 4, 1980) and *Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357 (S.D.N.Y., 1986); see also Advisory Opinion 2003-02 (SWP), n.8, for a description of FBI activities between 1941 and 1976. No such activities are alleged to be taking place at present, or to have taken place during the most current extended partial exemption period.

<sup>6</sup> Specifically, the SWP points to alleged relaxation in FBI guidelines concerning investigations and information gathering relating to threats to national security; increased Federal support for, and involvement in, State and local "fusion centers," described as "a collaborative effort of 2 or more Federal, State, local or tribal government agencies that combines resources, expertise, or information with the goal of maximizing the ability of such agencies to detect, prevent, investigate, apprehend and respond to criminal or terrorist activity"; and an increase in government surveillance of telephone and electronic communications. Exhibits I, M.

1 surveillance and harassment. The SWP, however, does not present evidence that the SWP has  
2 been under surveillance under any of these programs.

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

14 b. Interactions With Other Governmental Authorities

15 In addition to the generalized fear of increased government surveillance discussed above,  
16 the SWP raises one specific incident of what it believes is "FBI Surveillance and Information  
17 Sharing." The incident occurred when the SWP candidate for Vice President was stopped and  
18 questioned for over two hours by Canadian immigration authorities. The candidate states that,  
19 within seconds of scanning her passport, the Canadian immigration officer was able to review on  
20 her computer a "sizeable dossier" concerning the candidate and her prior activities. The SWP  
21 does not say that the Canadian government obtained any of the information from the U.S.

---

<sup>7</sup> *The Militant* describes itself as a "socialist newsweekly published in the interests of working people." See <http://www.themilitant.com/index.shtml>. A printed version is available on a subscription basis; an online version is available without cost at [www.themilitant.com](http://www.themilitant.com).

1 government. Rather, the SWP asserts, without providing any facts supporting its assertion, that  
2 the only possible explanation for this is that the U.S. government has been gathering information  
3 and monitoring the SWP and its members and sharing this information with the government of  
4 Canada, and possibly other countries. Any statement suggesting that the Canadian government  
5 had access to information provided by the U.S. government is therefore a speculative one. *See*  
6 Exhibits R, 15.

7 c. Firings and Alleged Workplace Intimidation

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

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

1           d. Hostility from private parties

2           The SWP submitted 22 exhibits consisting of attestations as to incidents of harassment,  
3 threats, or violence by private individuals or businesses. These exhibits are described below.

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

12           Two other exhibits allege threatening or hostile statements made by mail or by phone.<sup>8</sup>  
13 One phone message threatened to shoot the “president of the campaign” unless he left town  
14 immediately, while another stated that “We’re going to shut you down.” See Exhibits 10, 13.

15           Seventeen exhibits describe disruption of SWP workers or candidates while they were  
16 distributing SWP literature or attempting to obtain ballot petition signatures. According to the  
17 descriptions of some of these incidents, personnel of nearby businesses, including company or  
18 store security officers, required SWP campaigners to dismantle or move their tables displaying  
19 campaign literature and other party materials or to cease distribution of SWP materials while  
20 standing in a certain area. According to the exhibits, these incidents often occurred when the

---

<sup>8</sup> In a third exhibit, a pro-choice SWP candidate for local office stated that she received at her residence a postcard containing a graphic anti-abortion message. Although the exhibit says that the candidate made the statement in support of SWP’s request for the exemption, there is no allegation that the statement was because the candidate represents the SWP, rather than her position as a pro-choice candidate. Exhibit 14.

1 table or the campaigner was not on company premises, but only nearby, or in shopping mall  
2 parking lots. The exhibits indicate that, in some cases, company personnel threatened to call the  
3 local police, and one individual threatened that the FBI was on the way. *See Exhibits 29 – 45.*

4 e. Relations with local law enforcement authorities

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

13 For example, after looking through the campaign literature, police officers in  
14 Philadelphia, Pennsylvania purportedly warned the SWP workers that “We can put you on the  
15 no-fly list. Report you to Homeland Security.” The police officers temporarily took the  
16 workers’ identification cards only to return them a few moments later, remained parked in their  
17 patrol cars, and watched until the workers ended their campaigning.

18 In some of the situations described, police officers contended that the SWP campaigners  
19 needed permits to have a table on the sidewalks or to distribute literature. The SWP asserts,  
20 however, that in six of these seven cities or towns, local ordinances did not require a permit and  
21 the SWP campaigners’ activities were lawful. The SWP further states that in the one city that  
22 did have an ordinance requiring a permit to distribute political materials, the police officers’

1 actions reveal “anti-SWP animus in the selective application of these code provisions.” *See*  
2 Exhibits 16 - 28; *see also* Exhibits T - Y (relevant policies and ordinances.) Four of the incidents  
3 involving local police resulted in a ticket or summons being issued to SWP workers.

4 **Question Presented**

5 *Do the SWP, the Socialist Workers National Campaign Committee, other SWP party*  
6 *committees, and authorized committees of candidates of the SWP qualify for a continuation of*  
7 *their previous partial reporting exemption?*

8 **Legal Analysis and Conclusions**

9 No, the SWP committees no longer qualify for a continuation of the partial reporting  
10 exemption.

11 The Act requires political committees to file reports with the Commission that identify  
12 individuals and other persons who make contributions over \$200 during the calendar year or  
13 election cycle (depending on the type of committee), or who come within various other  
14 disclosure categories. 2 U.S.C. 434(b)(3), (5), (6); *see also* 2 U.S.C. 431(13). The Supreme  
15 Court has found that under certain circumstances, the Act’s disclosure requirements are  
16 unconstitutional as applied to a minor party because the threat to the exercise of First  
17 Amendment rights resulting from disclosure outweighs the government’s relatively insubstantial  
18 interest in disclosure. *Buckley v. Valeo*, 424 U.S. 1, 71-72 (1976). The Court recognized that  
19 “[t]hese movements are less likely to have a sound financial base and thus are more vulnerable  
20 to falloffs in contributions. In some instances fears of reprisal may deter contributions to the  
21 point where the movement cannot survive.” *Id.* at 71.

1           Because “[m]inor parties must be allowed sufficient flexibility in the proof of injury to  
2    assure a fair consideration of their claim” for a reporting exemption, “[t]he evidence offered  
3    need show only a reasonable probability that the compelled disclosure of a party’s contributors’  
4    names will subject them to threats, harassment, or reprisals from either Government officials or  
5    private parties.” *Id.* at 74. “The proof may include, for example, specific evidence of past or  
6    present harassment of members due to their associational ties, or of harassment directed against  
7    the organization itself. A pattern of threats or specific manifestations of public hostility may be  
8    sufficient.” *Id.* at 74.

9           The Commission must first determine whether the SWP continues to maintain its status  
10   as a minor party. *See Buckley*, 424 U.S. at 68-74. As evidenced by the low vote totals for SWP  
11   candidates, the lack of success in ballot access, and the small total amounts contributed to SWP  
12   committees, the Commission concludes that the SWP continues to be a minor party.

13           Next, the Commission must weigh three factors: (1) the history of violence or  
14   harassment, or threats of violence or harassment, directed at the SWP or its supporters by  
15   governmental authorities, including law enforcement agencies, or by private parties; (2) evidence  
16   of continuing violence, harassment, or threats directed at the SWP or its supporters by these  
17   same organizations or persons since the prior exemption was granted; and, balanced against the  
18   first two factors, (3) the governmental interest in obtaining identifying information of  
19   contributors and recipients of expenditures. The Commission has previously stated the general  
20   proposition that, where the impact of the activities of the SWP and its supporters on Federal  
21   elections is minimal because the possibility of an SWP candidate winning an election is remote,  
22   the government’s interest in obtaining such information is diminished. Advisory Opinion 2009-

1 01 (Socialist Workers Party); *see also* *FEC v. Hall-Tyner Election Campaign Comm.*, 678 F.2d  
2 416, 422 (2d Cir. 1982).

3 *A. History of Violence, Threats, and Harassment*

4 As explained above, there is a long history of threats, violence, and harassment against  
5 the SWP and its supporters by Federal and local law enforcement agencies and private parties.<sup>9</sup>  
6 It is against this backdrop that the more recent evidence presented by the requesters must be  
7 considered, *Buckley*, 424 U.S. at 74. *See* Advisory Opinion 2009-01 (Socialist Workers Party).  
8 The Commission once again recognizes the historical pattern of previous actions against the  
9 SWP as a factor weighing in favor of granting a partial reporting exemption.

10 As those acts and incidents recede further into the past, however, with minimal newly  
11 alleged governmental harassment or disruption of the SWP, the importance of the history of  
12 harassment diminishes. FBI surveillance of the SWP lasted for 25 years but ended around 1976  
13 – nearly 40 years ago. *Brown*, 459 U.S. at 99. The SWP has provided little evidence or even  
14 allegations of any continuing surveillance or interference by the federal government in the  
15 decades since. In the over 20 years since the SWP began requesting the partial reporting  
16 exemption through advisory opinions, it has made only seven allegations of governmental  
17 harassment or disruption (including one in the current request).<sup>10</sup> None of those allegations was

---

<sup>9</sup> Courts have detailed this history of violence, harassment, surveillance and disruption against the SWP. *See generally* *Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357 (S.D.N.Y. 1986); *Socialist Workers Party v. Attorney General*, 666 F. Supp. 621 (S.D.N.Y. 1987). The Supreme Court has previously referred to “the substantial evidence of both governmental and private hostility toward and harassment of SWP members and supporters.” *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87, 98-99 (1982) (quoting the underlying district court opinion).

<sup>10</sup> *See* Advisory Opinion 2009-01 (Socialist Workers Party); Advisory Opinion 2003-02 (Socialist Workers Party); Advisory Opinion 1996-46 (Socialist Workers Party); Advisory Opinion 1990-13 (Socialist Workers).

1 corroborated by statements by government employees, as the allegations were in the SWP's pre-  
2 1990 court cases.

3 Similarly, in its prior advisory opinion requests, the SWP has provided the Commission  
4 with accounts of serious incidents of harassment by private parties that took place in the past,  
5 however, it is clear that those incidents have declined over time. See Advisory Opinion 2009-01  
6 (Socialist Workers Party) (describing the alleged incidents of violence and harassment from  
7 2003-2008 as "appear[ing] to be of lesser magnitude than those referenced in court opinions and  
8 prior AOs granting the exemption"). Historical government harassment and disruption may later  
9 discourage individuals from getting involved with the SWP for fear of harassment or  
10 surveillance by federal government agencies. See, e.g., Advisory Opinion 2009-01 (Socialist  
11 Workers Party); Advisory Opinion 2003-02 (Socialist Workers Party). In order for those fears to  
12 be reasonable, however, there must be some current or recent evidence of government  
13 harassment or disruption. See *Brown*, 459 U.S. at 98 (quoting the district court's finding that  
14 there was "proof of specific incidents of private and government hostility toward the SWP and  
15 its members within the four years preceding the trial"); see also *Hall-Tyner*, 678 F.2d at 422.

16 In light of how distant in the past government surveillance and harassment of the SWP  
17 took place, and the substantial decline in private harassment of the SWP generally through the  
18 time period considered in Advisory Opinion 2009-01 (Socialist Workers Party), historical  
19 government harassment provides only modest, and by itself insufficient, support for the SWP's  
20 current request for a prospective partial reporting exemption.

21 *B. Recent Violence, Harassment, and Threats*

1           The Commission must next examine the accounts of incidents alleged to have occurred  
2 between January 2009 and December 2012. The SWP provides one allegation of government  
3 harassment, and several incidents involving private parties or local police officers.

4           In the one incident alleging government harassment, the SWP states that its 2012 Vice-  
5 Presidential candidate was questioned extensively when crossing the border into Canada to  
6 attend meetings with Canadian socialists. *See Exhibit 15.* According to the SWP, the “sizeable  
7 dossier” available to the Canadian immigration authorities suggests an ongoing surveillance by  
8 the U.S. government. It is also possible, however, that the information was gathered by the  
9 Canadian government itself. Without more complete information, credible in nature, such as  
10 statements by Federal officials indicating a need to gather information on the SWP, or more  
11 concrete evidence of harassment by government officials, this incident is difficult to assess, and  
12 any assertion by SWP that U. S. government provided the information to the Canadian  
13 authorities is speculative. Moreover, even had the Canadian immigration authorities obtained  
14 some or all of the information from the U. S. government, it could have been long dormant  
15 information. In either case, the result was nothing more than the inconvenience of an inquiry and  
16 a temporary delay in crossing the border into Canada. No other information to support SWP’s  
17 contention of government surveillance is offered in the current request.

18           The SWP submits evidence regarding government surveillance of certain domestic  
19 advocacy groups but SWP is excluded from the list. The SWP points to a September 2010 report  
20 by the Department of Justice’s Inspector General regarding surveillance of groups such as People  
21 for the Ethical Treatment of Animals, Greenpeace, the Catholic Worker Movement, and the  
22 Thomas Merton Center, as well as other sources purporting to demonstrate government

1 surveillance of additional groups. There is no suggestion that the SWP itself has recently, or at  
2 any time during the most recently extended partial exemption period, been under surveillance or  
3 otherwise interfered with by the Federal government. *See Citizens United v. FEC*, 558 U.S.  
4 \_\_\_\_\_, 130 S. Ct. 876, 915 (2010) (although examples of harassment cited by *amici* may be cause  
5 for concern, Citizens United “has offered no evidence that its members may face similar threats  
6 or reprisals”). Surveillance of groups *other* than the SWP provides little support for the  
7 probability of future government harassment of the SWP. Indeed, if these reports are accurate,  
8 the omission of the SWP suggests, if anything, a lack of current governmental interest in the  
9 SWP.

10 For claims of harassment by local police officers, the SWP submits allegations regarding  
11 a number of incidents of police officers reportedly preventing the SWP from distributing  
12 campaign flyers, the SWP’s periodic newspaper *The Militant*,<sup>11</sup> and other materials, as described  
13 above. But there is little evidence that the police officers were acting out of animus towards the  
14 SWP. In almost all of the 13 episodes described, there is no evidence to suggest the officers  
15 would have reacted differently toward any group that set up tables on public streets or distributed  
16 pamphlets..

17 In only two instances does the SWP allege disparate treatment by local authorities of  
18 SWP’s workers compared to the workers of other organizations undertaking the same type of

---

<sup>11</sup> Despite its strident title and regardless of the views it may have espoused over the past several decades of its existence, the content of *The Militant* during the period of the most recent extended partial exemption period arguably contains mainstream viewpoints on national issues and provides news coverage well within the scope of the national debate on the issues of the day. For example, the lead article of the February 11, 2013 edition of the *The Militant* is entitled “Appeals Court Rules Obama Appointments Unconstitutional;” the other front page articles focus on current workers’ rights issues and international events also covered by larger media organizations. *See* [www.themilitant.com/txtindex.shtml](http://www.themilitant.com/txtindex.shtml).

1 activity nearby. *See* Exhibits 18 - 19. However, in one instance the SWP reports it pre-cleared  
2 its intended activity with the city's police counsel and was permitted to continue distribution of  
3 SWP materials when this was relayed to the police officers. *See* Exhibit 26. There is no  
4 indication that the SWP attempted to obtain permits or provide advance notice for its activities in  
5 other venues before undertaking them. As described above, the SWP cites incidents involving  
6 SWP workers receiving a ticket or summons from local police and notes that SWP workers even  
7 collected the names and/or badge numbers of some of the officers involved, but SWP does not  
8 report any follow-up on these incidents with the relevant police department or describe the  
9 judicial result, if any, and SWP provides no suggestions of any adverse consequences.

10 According to the advisory opinion request, six of the seven cities cited did not require a  
11 permit to distribute political materials. But there is no indication that the SWP reported the  
12 police officers involved in the alleged incidents to the applicable police department, or that the  
13 alleged interference with pamphlet distribution, represent systemic harassment rather than  
14 isolated behavior by individual officers that could not be prevented in the future through  
15 complaints filed with the police departments or boards overseeing them. *Cf.*  
16 *ProtectMarriage.com v. Bowen*, 830 F. Supp. 2d 914, 933 (E.D. Cal. 2011) (finding that  
17 plaintiffs did not lack recourse to protect against private violence because they had not shown  
18 that "law enforcement was or would be non-responsive to any illegal acts directed at Plaintiffs'  
19 contributors").

20 The SWP presents evidence of three people who were allegedly subject to employment  
21 retaliation as a result of association with the SWP. In no case, however, did the employer cite  
22 SWP membership as the explicit reason for removal of these temporary workers from their

1 positions. *See* Exhibits 1, 3 - 4. Employers mentioned a shortage of work, lack of fit with the  
2 company, Exhibit 1; attitude issues, Exhibit 3; and “production issues.” Exhibit 4. There is  
3 thus serious question as to whether any of the employees was fired due to the employee’s support  
4 for the SWP. When courts have granted reporting exemptions, they have done so on the basis of  
5 greater evidence of recent firings. *See, e.g., Brown*, 459 U.S. at 99 (“[I]n the 12-month period  
6 before trial, 22 SWP members . . . were fired because of their party membership.”).

7 Similarly, the SWP submits evidence of less serious harassment, threats, or violence by  
8 private individuals or businesses than it has in the past. In connection with previous advisory  
9 opinion requests, the SWP has provided the Commission with accounts of serious and  
10 widespread incidents by private parties. Such incidents included a brick wrapped in incendiary  
11 material thrown through the window of a local SWP headquarters, bricks thrown through SWP  
12 office windows, a shot fired through the window of an SWP bookstore and campaign  
13 headquarters of an SWP mayoral candidate, and widespread vandalism to SWP property. *See*  
14 *Advisory Opinion 2009-01 (Socialist Workers Party); Advisory Opinion 2003-02 (Socialist*  
15 *Workers Party); Advisory Opinion 1996-46 (Socialist Workers Party).*

16 In connection with this request, by contrast, many of the SWP’s alleged incidents merely  
17 involve private parties expressing heated disagreement with the SWP’s positions. Such episodes  
18 are “typical of any controversial campaign,” and “do not necessarily rise to the level of  
19 ‘harassment’ or ‘reprisals.’” *ProtectMarriage.com*, 830 F. Supp. 2d at 934. Insulting messages  
20 containing harsh language are certainly not unusual occurrences in campaigns today, as was  
21 commonplace in the public discourse concerning our most recent presidential election.

1           There is also no evidence that SWP workers called the local police for assistance when  
2 encountering interference from private parties, such as security guards preventing them from  
3 distributing campaign materials on public property. In the absence of such evidence, the  
4 Commission is unable to find at this point in time that the SWP “lacks adequate recourse to  
5 pursue means short of non-disclosure” to protect against any unlawful interference with its  
6 campaigning. *ProtectMarriage.com*, 830 F. Supp. 2d at 932.

7           In short, the recent evidence submitted does not indicate that serious harassment and  
8 reprisals are likely to be inflicted on SWP supporters. The SWP submits evidence of a number  
9 of instances in which SWP supporters expressed such fears, but they do not appear reasonable on  
10 the basis of the SWP’s recent history. Moreover, over the last four years during which the most  
11 recent extension of SWP’s partial reporting exemption has been in place, SWP received  
12 contributions from only 11 individuals who would have otherwise been subject to itemized  
13 disclosure absent the exemption; SWP has presented no evidence whatsoever that any of these 11  
14 individual contributors would refrain from supporting SWP in the future absent an extension of  
15 the partial disclosure exemption.<sup>12</sup> Similarly, over the last four years SWP has reported itemized  
16 disbursements to only 17 different vendors and SWP has presented no evidence that any of these  
17 vendors would refrain from engaging in future business with SWP without the exemption.<sup>13</sup>  
18 Accordingly, SWP has not shown a reasonable probability that the disclosure of its contributors’  
19 or vendors’ names will currently subject them to threats, harassment, or reprisals of the kind

---

<sup>12</sup> These itemized contributions total \$4,200. During the same four year period, SWP received an additional \$13,108.89 in contributions that did not require itemized disclosure.

<sup>13</sup> These disbursements total \$21,594.91.

1 contemplated by the controlling court opinion, from either government officials or private  
2 parties. *See Buckley*, 424 U.S. at 74.

3 *C. Government Informational Interest*

4 The third and final consideration in the Commission's analysis is the governmental  
5 interest in obtaining identifying information of contributors and recipients of expenditures. *See*  
6 *Brown*, 459 U.S. at 92; *ProtectMarriage.com*, 830 F. Supp. 2d at 930 (noting that the disclosure  
7 exception is "not for the majority, but for those groups in which the government has a  
8 diminished interest.")

9 As a general matter, transparency "enables the electorate to make informed decisions and  
10 give proper weight to different speakers and messages." *Citizens United*, 130 S. Ct. at 916. The  
11 disclosure provisions of the Act also aim to deter corruption and the appearance of corruption,  
12 but "the governmental interest in disclosure is diminished when the contribution in question is  
13 made to a minor party with little chance of winning an election," or where "contributions to a  
14 minor party . . . are concerned, for it is less likely that the candidate will be victorious." *Buckley*,  
15 424 U.S. at 67.

16 Information provided by the SWP indicates that the SWP and committees supporting its  
17 candidates continue to receive very small total amounts of contributions and very low vote totals  
18 in partisan elections. This suggests that the activities of the SWP, its candidates, and committees  
19 supporting its candidates have little, if any, impact on Federal elections. *See*  
20 *ProtectMarriage.com*, 830 F. Supp. 2d at 928. The governmental interest in the SWP's donors  
21 and vendors remains somewhat low.



1 episodes of serious harassment and reprisals. The Commission thus concludes that the SWP no  
2 longer qualifies for the partial disclosure exemption.

3           Given the long duration of SWP's partial reporting exemption, however, the SWP's  
4 contributors and recipients of disbursements between December 31, 2012 and the date of this  
5 opinion may have expected, with some basis, that disclosure would not occur for this interim  
6 period. The Commission thus extends the partial reporting exemption to the date of this opinion.  
7 However, the SWP must begin disclosing all information required by the Act and Commission  
8 regulations for receipts and disbursements received or made after the date of this opinion.

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

18

19

20

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

4  
5  
6  
7  
8  
9  
10  
11  
12

On behalf of the Commission,

Ellen L. Weintraub  
Chair