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February 16, 2017

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

Dear Commissioners:

On behalf of our clients, the Socialist Workers Party, the Socialist Workers National Campaign Committee, and committees supporting candidates of the Socialist Workers Party (hereinafter collectively, for convenience, "SWP"), we respectfully request that the Commission reject Draft A of Advisory Opinion 2016-23 and, in its stead, grant the SWP a further extension of the partial reporting exemption until December 31, 2020.

SUMMARY

A. Draft A Rests Upon an Unprecedented, Dangerous Standard for Determining the Public's Interest in Disclosure That Is Contrary to Law, Requiring Reconsideration of the SWP's Request Without Reliance On This Erroneous Standard.

A central premise of Draft A for denying exemption is that "the public interest in disclosure of SWP's financing is significantly greater than it has been at any other time that the Commission considered the SWP's reporting exemption" because: (1) the SWP received 12,465 votes in seven (7) states in 2016; (2) the SWP "may be encouraged by major-party interests in order to divert votes from other major-party contenders"; (3) the SWP received $82,371.86 in contributions in 2016; and (4) "Senator Bernard Sanders raised over $231,800,000 and received more than 13 million votes … in the Democratic Party presidential primaries." Draft A, at 9-12, 17-18.

This holding is wrong as a matter of law. Acceptance of Draft A, with this erroneous, dangerous and unprecedented standard for determining the government's interest in disclosure, would fundamentally change the requirements for exemption in ways that are contrary to Supreme Court law. This alone requires the Commission to reject Draft A and reconsider the SWP's Request without reliance on this faulty premise.

Contrary to Draft A's characterization, the government has no interest in disclosure based on the SWP's 2016 vote total and ballot access, as this vote total was not nearly enough to change the election results in any state. Further, the SWP'S vote total and ballot access were significantly *below* the SWP's vote totals and ballot access in several prior election cycles when the Commission granted exemption. Indeed, the SWP candidate received only 0.009% of the entire vote total in 2016.

Further, Draft A's unsupported allegation to the contrary, there is not a *scintilla* of evidence of any vote diversion, nor has there ever been in the more than 75 years of the SWP's participation in elections. In fact, such diversion is entirely contrary to the reason the SWP runs election campaigns, which is to advocate its own, entirely distinct and independent political positions. In the past 26 year in which the Commission has granted the SWP exemption, it has never, and cannot now, assert an augmented government interest in disclosure based on potential vote diversion merely because of some completely speculative conjecture that has absolutely no historical or current support. It is totally at odds with the Supreme Court's holding in *Buckley v. Valeo,* 424 U.S. 1 (1976), by suggesting that there is always a compelling governmental interest in disclosure because there is always the theoretical possibility of a minor political party being used as a "vehicle for diversion."

Draft A's claim that it is "increasingly difficult for the Commission to conclude that the SWP's 'financial backing is so tenuous as to render [it] susceptible to a ... speculative fall-off in contributions' if the SWP's contributors are disclosed" blinks at reality and, in fact, is contrary to Supreme Court precedent, the Commission's own precedent and the cases cited by Draft A, in which the Supreme Court and the Commission granted the SWP exemption even though it had received more contributions than it did in 2016. Draft A, at 18 (*citing ProtectMarriage.com*, 830 F. Supp. 2d at 929).

Finally, Draft A's reliance on the success of Senator Sanders' campaign and general polls about Socialist identification to justify a greater governmental interest seriously misconceives, and would represent a significant departure from, Supreme Court precedent. This is particularly true here where the SWP's definite and publicized viewpoints, including its advocacy for the abolition of capitalism in the United States and the establishment of a workers' government to achieve socialism, are so obviously distinct from those of Senator Sanders and, unlike the viewpoints of Senator Sanders, the SWP's unique viewpoints have provoked repeated acts of hostility, both governmental and private.

Any one of these four errors would compel rejection of Draft A as a matter of constitutional law. Together, they jettison the constitutional requirement of a <u>*compelling*</u> governmental interest in disclosure in favor of a *per se* rule that there is always such an interest, contrary to the Supreme Court's jurisprudence and the FEC's own precedent.

In effectively applying a *per se* rule of governmental interest in favor of disclosure, Draft A has lost sight of the governing First Amendment principle: that "[t]he Constitution protects

against the compelled disclosure of political associations and beliefs. Such disclosures 'can seriously infringe on privacy of association and belief guaranteed by the First Amendment.' ... The right to privacy in one's political associations and beliefs will yield only to a 'subordinating interest of the State [that is] compelling,' and then only if there is a 'substantial relation between the information sought and [an] overriding and compelling state interest.'" *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87, 91-91 (1982) (internal citations to numerous Supreme Court cases omitted)

B. Draft A Fails to Follow the Constitutionally Compelled Balancing of Factors

As a minor party, the Commission must determine whether 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" by "*weigh[ing]* three factors: (1) the history of violence or harassment, or threats of violence or harassment, directed at the SWP or its supporters by governmental authorities, including law enforcement agencies, or by private parties; (2) evidence of continuing violence, harassment, or threats directed at the SWP or its supporters since the prior exemption was granted; and, *balanced against* the first two factors; (3) the governmental interest in obtaining identifying information of contributors and recipients of expenditures." AO 2012-38, at 8 (emphasis added); *accord* AO 2009-01, at 10.

On a proper constitutional analysis, there is no governmental interest in disclosure. It therefore requires only a minimal showing of factors (1) or (2) to require exemption. There is, however, far more than a minimal showing here: the SWP has suffered well-documented "serious and widespread" threats, harassment and reprisals from both the government and private parties for more than 75 years, including for the period between 1985 and 2012, as Draft A itself acknowledges. Draft A, at 16. It has also presented a record of recent threats, harassment and reprisals that, although the not the same in number or type as in prior election cycles, is not insignificant.

There may come a time when the SWP no longer requires exemption from FECA disclosure requirements if, for example, SWP candidates receive vote totals that could change the results of an election or if there were actual evidence of vote diversion combined with a sustained period of *de minimis* threats, harassment and reprisals against SWP supporters. However, on the undisputed record, that time is not now.

After much litigation, including by the SWP and others in the Supreme Court and other federal courts, faithfully applied by the Commission, a well-developed standard has been established concerning exemptions such as that of the SWP. Draft A departs from this standard so far and in so many ways as to re-open this area of the law and needlessly invites a whole new round of consideration.

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ARGUMENT

I. Draft A Rests Upon an Unprecedented, Dangerous Standard for Determining the Public's Interest in Disclosure That Is Contrary to Law, Requiring Reconsideration of the SWP's Request Without Reliance On this Erroneous Standard.

Disclosure under the Federal Election Campaign Act "must be justified by a compelling governmental interest and there must be a 'substantial relation' between the government interest and the information required to be revealed." *Hall-Tyner*, 678 F.2d at 421 (quoting Buckley, 424 U.S. at 64). The Supreme Court in *Buckley* specified three governmental interests to be served by the disclosure requirements: (1) disclosure deters corruption by exposing large contributions that might otherwise influence the recipient (a) to deliver secret post-election *quid pro quo* favors should he/she win the election or (b) divert votes to a minor party candidate from a rival major party candidate; (2) it assists voters in placing a "candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches"; and (3) it facilitates the detection of violations of the FECA contribution limitations. *Buckley*, 424 U.S. at 66-68.

Tellingly, and contrary to constitutional requirement, Draft A does not state whether and which of these three governmental interests is at issue here or how there is a substantial relation between the information sought and one of these overriding and compelling state interests. Draft A would have the Commission abandon the constitutionally-compelled analysis.

Draft A simply asserts that the governmental interest in disclosure is greater than in the past based on (1) an unjustifiably narrow reading of the SWP's vote totals and contributions, which reading is inconsistent with Supreme Court and this Commission's own precedent, and (2) reliance on the "electoral success of a candidate with a party identification materially similar" to the SWP, which is both untenable and even absurd on its face, and constitutionally irrelevant.

The constitutionally compelled analysis of the three governmental interests identified by the Supreme Court in *Buckley* reveals that none applies to the SWP here, as shown below.

First, there is no chance of corruption, as the SWP: does not receive large contributions; has never won an elected position; and has not received large vote totals. *See infra* pp.7-9.

Second, Draft A's allegation that the SWP "may be encouraged by major-party interests in order to divert votes from other major-party contenders" is completely unfounded. *See infra* pp. 6-8. The Commission cannot deny the SWP the protections guaranteed by the First Amendment merely because of some completely speculative conjecture that has absolutely no historical or current support. *See Brown*, 459 U.S. at 95 & n.11 ("the mere possibility that minor parties will resort to corrupt or unfair tactics cannot justify the substantial infringement on First Amendment interests that would result from compelling disclosure ..."). *Brown*, 459 U.S. at 95 & n.11

Third, Draft A does not, and cannot, deny that the political viewpoints of SWP candidates are definite and publicized and its place in the political spectrum is clear both through its campaign speeches and party label. *See infra* pp. 12-13; *see generally Brown*, 459 U.S. at 89 (1982, the "party states in its constitution that its aim is 'the abolition of capitalism and the establishment of a workers' government to achieve socialism.'"); 2016 SWP Campaign Statement, *Alyson Kennedy for U.S. president, Osborne Hart for vice president!* ("the only way forward is to organize independent working-class struggles that point toward overturning the dictatorship of capital, replacing it with a government of workers and farmers and building a new society based on human solidarity and joining the worldwide fight for socialism."). The SWP has been consistent in its message for more than 75 years, and there is no evidence that its positions have been influenced by financial contributors, which Draft A does not contest. *See Citizens United v. FEC*, 130 S. Ct. 876, 916 14 (2010) (disclosure "enables the electorate to make informed decisions and give proper weight to different speakers and messages") (cited by Draft A, at 8).

Fourth, under prior FEC exemptions, the SWP is still required to maintain information, otherwise exempt from disclosure, so as to be able to provide this information to the Commission in connection with an investigation. *See, e.g.*, AO 2012-38, at 11.

A. Draft A Represents a Significant and Unwarranted Departure From Supreme Court Precedent By Denying Exemption Based On the Theoretical Possibility of the SWP's Being Used As a "Vehicle For Diversion." There Is No Evidence of Vote Diversion Here.

Based on the SWP's 2016 presidential candidate's 12,465 votes, Draft A alleges that the public interest in disclosure is increased because a "'minor party *sometimes* can play a significant role in an election. Even when a minor-party candidate has little or no chance of winning, he *may be* encouraged by major-party interests in order to divert votes from other major-party contenders.'" Draft A, at 10 (*quoting Buckley*, 424 U.S. at 70).(emphasis added)

However, there is absolutely no evidence in the record that this is a concern here. Indeed, Draft A's language tips its hand: it would find a governmental interest always present, without any factual basis, because sometimes that interest may be present. The Commission cannot constitutionally deny the SWP the protections guaranteed by the First Amendment merely

because of some completely speculative conjecture that has absolutely no historical or current support. As the Supreme Court has held, "the mere possibility that minor parties will resort to corrupt or unfair tactics cannot justify the substantial infringement on First Amendment interests that would result from compelling disclosure of recipients of expenditures." *See Brown*, 459 U.S. at 95 & n.11. Yet, that is precisely, and explicitly, what Draft A would do.

Draft A provides absolutely no evidence that, in the nearly 70 years in which its candidates have participated in elections, an SWP candidate has ever been used as a diversion, by, for example, "being encouraged by major-party interests in order to divert votes from other major-party contenders," serving as a spoiler or receiving an unexpected influx of donations from non-traditional supporters, *Buckley*, 424 U.S. at 70, nor can it. *See* Ex. 34 (attached) (declaration demonstrating that the SWP has never been used to divert votes from another party's candidates and that doing so is contrary to the party's reason for running candidates.).

Given the complete lack of evidence of any vote diversion, there is simply no compelling government interest in disclosure in this case based on a theory of vote diversion (or otherwise, as shown here) and, even if there were, there is not a "substantial relation" between that interest and the information sought to be revealed. *See generally, e.g.,* Katharine Q. Seelye, Voter Fraud in New Hampshire? Trump Has No Proof and Many Skeptics, *N.Y. Times* (Feb. 13, 2017) (increasing number of unsupported allegations of voter fraud).

Indeed, over the last 26 years in which the Commission has considered and granted the SWP's exemption requests, the Commission has never imposed a requirement that the SWP prove that no votes were diverted and no such requirement should be imposed now. It is totally at odds with *Buckley*, by suggesting that there is always a compelling governmental interest in disclosure because there is always the theoretical possibility of a minor political party being used as a "vehicle for diversion."

Moreover, the votes that the SWP presidential candidate received were nowhere close to changing the results between the two major party contenders in any state. The only seriously contested state in which the SWP presidential candidate was on the ballot was Minnesota in which the differential between the Democratic and Republican candidates was 44,765. *See* www.thegreenpapers.com. The SWP candidate received 1,672 votes, which was eighth (8) out of the nine (9) parties on the ballot – the Libertarian Party received 112,972 votes; the Independence Party received 53,076 votes; the Green Party received 36,985 votes; the Legal Marijuana Now Party received 11,291 votes; and the Constitution Party received 9,456 votes. *Id.*

That Draft A impermissibly and dangerously departs from established constitutional principle and precedent is further revealed by its exclusive reliance on authority that is not even remotely applicable here. *See* Draft A, at 10 (citing *United States v. Goland*, 959 F.2d 1449 (9th Cir. 1992) and Carla Marinucci, GOP Donors Funding Nader/Bush Supporters Give Independent's Bid a Financial Lift, *San Francisco Chronicle.*, July 9, 2004. In *Goland*, the defendant's admitted intention was to divert votes from the Republican candidate in the U.S. Senate race in California and, in addition, the third party candidate the defendant supported

received 109,916 votes, which was more than the 104,868 differential between the Democratic and Republican candidates. *See* 959 F.2d at 1451 ("To help [the Democrat's] odds, Goland decided he could divert Republican votes from [the Republican] by running an independent expenditure campaign favoring [the American Independent Party candidate] and opposing [the Republican candidate]. Goland had run a similar campaign …in 1984") and http://www.ourcampaigns.com/RaceDetail.html?RaceID=3657 (vote totals). Ralph Nader, cited in the *San Francisco Chronicle* article, received 2,882,955 votes in the 2000 presidential election, 465,650 votes in the 2004 presidential election and 739,034 votes in the 2008 presidential election – a far cry from the 12,465 votes the SWP presidential candidate received in 2016. *See* http://www.fec.gov/pubrec/fe2000/tcontents.htm; http://www.fec.gov/pubrec/fe2004/federalelections2004.shtml; http://www.fec.gov/pubrec/fe2008/federalelections2008.shtml.

Draft A should be rejected on this basis alone, and the Commission should reevaluate the SWP's current Request without reliance on speculative vote diversion.

B. Draft A Breaks With Its Own Precedent By Stating that the SWP's Vote Totals and Ballot Access in 2016 Significantly Increases the Government Interest in Disclosure

As a matter of law, the government has no interest in disclosure based on the SWP's 2016 vote total and ballot access, as: this vote total was not nearly enough to change the results in any state; this vote total and ballot access were significantly below the SWP's vote totals and ballot access in several prior election cycles when the Commission granted exemption; and this vote total represents 0.009% of the entire vote total in 2016. *See* Draft A, at 9; *see also id.* at 9-12, 17-18.

Draft A emphasizes that the SWP candidate may have had "the ninth-widest ballot access among the 31 presidential candidates who qualified for the ballot in at least one state"[1] and "received more than 12,000 votes, which ranked 11th out of the 31 presidential candidates, and which was nearly triple the 4,100 votes the SWP's candidate received in 2012." Draft A, at 10. However, all this is constitutionally irrelevant. It is a meaningless numbers game that fails to make the constitutionally required analysis of whether the SWP's candidate could have had any impact on the election's outcomes – which it clearly did not.

The votes that the SWP presidential candidate received were nowhere close to changing the results between the two main party contenders in any state, *see supra* p.7, and the 12,465 votes the SWP presidential candidate received represented only 0.009% of the total votes (136,792,634) cast in the 2016 presidential elections. *Compare* Draft A, at 10 *with* data available at www.thegreenpapers.com.

[1] The SWP has not been able to verify this allegation and reserves the right to challenge.

The Supreme Court in *Buckley* defined minor parties as, *inter alia*, those "with little chance of winning an election." 424 U.S. at 70. Clearly, the SWP's 2016 presidential candidate had "little chance of winning an election" with 12,465 votes.

Indeed, vote total is significantly below the SWP's vote totals in prior cycles in which the Supreme Court and the Commission found, without qualification, that the SWP was a minor party that warranted exemption:

- In 1980, the Ohio SWP's candidate for the U.S. Senate received fewer than 77,000 votes, less than 1.9% of the total vote, which the Supreme Court deemed "little success at the polls," *Brown*, 459 U.S. 87, 89 (1982);
- In 1980, the SWP presidential candidate received 40,105 votes in 29 states;
- In 1984, the SWP presidential candidate received 24,681 votes in 24 states;
- In 1988, the SWP presidential candidate received 15,604 votes in 16 states; and
- In 1992, the SWP presidential candidate received 23,058 votes, which the Commission termed "very low."

See Advisory Opinion 1990-13, at 8; AOR 1996-46 at 5.

The SWP notes that it did not have any candidates on the ballot for the U.S. Senate or House in 2016, unlike in prior years when the Commission held that the SWP qualified as a minor party. *See, e.g.*, AOR 2009-01, at Ex. D (Exemption granted even though there were SWP candidates for Congress on the ballot in nine (9) different races).

Draft A's also alleges that the SWP presidential candidate's "achiev[ing] ballot access in 7 states that held a combined 70 electoral votes" means that the governmental interest in disclosure is "increase[d]" and "greater than it has been at any other time that the Commission considered the SWP's reporting exemption." Draft A, at 10, 12. This allegation is wrong. In fact, the SWP has achieved far greater ballot access in years past when the Commission granted exemption without finding that the governmental interest in disclosure was increased. For example, in 2004, the SWP presidential candidate was on the ballot in 14 states with a combined 147 electoral votes and, in 2008, the SWP presidential candidate was on the ballot in 10 states with a combined 127 electoral votes. *See* Ex. D to AOR 2009-01; *cf.* AO 2009-01 at 5 ("The SWP's current request presents facts demonstrating that it has been a minor party since its founding in 1938 … Data from the 2004, 2006, and 2008 elections *show very low vote totals* for SWP presidential and other Federal candidates.") (emphasis added).

Finally, it bears repeating that no SWP candidate has ever won an election in the almost 70 years since the SWP first ran candidates for President and Vice-President of the United States in 1948, despite continuously running presidential and vice-presidential candidates since that time, as well as candidates for numerous other Federal, State and local offices. *See, e.g.*, AO 2009-01, at 2.

C. Draft A's Allegation That Public Interest In Disclosure Is "Significantly Greater" Than In the Past Because the SWP Received $82,371.86 In Contributions Is Contrary to the Supreme Court and the Commission's Precedent

Draft A claims that, in part because the SWP received $82,371.86 in contributions in 2016, "the public interest in disclosure of SWP's financing is significantly greater than it has been at any other time that the Commission considered the SWP's reporting exemption" and that it is "increasingly difficult for the Commission to conclude that the SWP's 'financial backing is so tenuous as to render [it] susceptible to a ... speculative fall-off in contributions' if the SWP's contributors are disclosed." Draft A, at 18 (*citing ProtectMarriage.com*, 830 F. Supp. 2d at 929).

This claim is contrary to Supreme Court precedent, the Commission's own precedent and the cases cited by Draft A and blinks at reality. Draft A should be rejected on this basis alone and the SWP's Request reevaluated without greater reliance placed on these contributions totals.

In *Brown*, the Supreme Court held that the SWP in Ohio warranted exemption from state disclosure requirements because, *inter alia*, it lacked a "sound financial basis" and was "more vulnerable to falloffs in contributions" even though it had received $21,929 in 1976. *See Brown*, 459 U.S. at 92-93, 99-100; Brief for Appellees, *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, WL 608509 (March 30, 1982) (Ex. 35, attached). With inflation, $21,929 1976 dollars are worth approximately $92,497.60 in 2016. *See* U.S. Dep't of Labor, Bureau of Labor Statistics, *available at* https://data.bls.gov/cgi-bin/cpicalc.pl.

In 2000, the Commission granted exemption even though the SWP received $83,648 in contributions, which is not only larger than the 2016 total but also represented a much larger share of the approximately $528,900,000 in total publicly disclosed contributions to presidential candidates at that time (0.016%), than is presented here *Compare* http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do *with* https://www.opensecrets.org/pres04/; *see infra* p.11 (2016 contribution represent 0.005% of the total disclosed contributions in 2016).

Simply because the SWP is able to raise more money in one election cycle compared to another does not necessarily mean that the SWP is any less "vulnerable to falloffs in contributions." When viewed in absolute figures, $82,372 in contributions – with only 86 contributions nationwide of over $200 – does not place the SWP on the kind of "sound financial basis" that would minimize its vulnerability to falloffs in contributions, as the Supreme Court and the Commission have previously held.

Draft A provides absolutely no support for its claims to the contrary. Quite the opposite, the court in the case cited by Draft A, *ProtectMarriage.com*, went to great lengths to distinguish the SWP from the plaintiffs in that case:

> Unlike the facts in *Brown*, the proponents of Proposition 8 succeeded in persuading over seven million voters to support their cause. They were successful

> in their endeavor to pass the ballot initiative and raised millions of dollars in the process. This set of circumstances is a far cry from the sixty-member SWP party, repeatedly unsuccessful at the polls, and incapable of raising sufficient funds. ... '[C]ampaign contributions and expenditures ... averaged approximately $15,000 annually.' ... Indeed, it became abundantly clear during oral argument that Plaintiffs could not in good conscience analogize their current circumstances to those of either the SWP or the Alabama NAACP circa 1950.

830 F. Supp. 2d at 928-32 (emphasis added) (internal citations omitted).

Draft A's observation that the SWP's "more than $80,000 in contributions during 2016 [n]ot only [] represent[s] a sevenfold increase from the SWP's fundraising during the 2012 election cycle, it also places the SWP in the top half of all active non-candidate committees in terms of fundraising success" bears absolutely no relation to the legal analysis required under Supreme Court precedent. Draft A, at 9-10.

Neither Supreme Court precedent nor logic would define the governmental interest in disclosure by reference either to the relative amount of contributions a party receives from one election cycle to another or to the amount of money it receives compared to other parties. For example, the govemmental interest in disclosure does not increase in any meaningful way if a party that receives $20 in contributions in one election cycle then $4,000 in contributions in the next election cycle, representing a 200-fold increase, nor would it increase if the party was the third most successful party in terms of fundraising for a presidential campaign having raised $4,000 in 2016 if the first two (major) parties raised $30 million each.

In just the same way, SWP contributions remain insignificant compared to the money needed to operate a national presidential campaign today and the total amount of money contributed in 2016. The SWP's contributions represent 0.005% of the nearly $1.5 billion dollars in disclosed 2016 campaign contributions, which does not include the hundreds of millions of dollars in "dark money" that was contributed in this presidential election. *See* http://www.fec.gov/disclosurep/pnational.do; *see also* Michael Beckel, What is political 'dark money' — and is it bad?, *available at* https://www.publicintegrity.org/2016/01/20/19156/what-political-dark-money-and-it-bad.

Draft A blinks at reality when it claims that $82,371.86 in presidential campaign contributions today somehow places a party in a non-tenuous, "sound financial basis." This amount of money is still so insignificant compared to both the amount of money involved in presidential elections today and the amount of money required to operate a presidential campaign that there can be no "compelling government interest" in disclosure of the origin of this amount of money, let alone a substantial relation between this interest and the information that would be required to be disclosed by the SWP.

D. Draft A's Reliance On the Success of Senator Sanders and the Number of Voters Identifying as Socialists Seriously Misconceives, and Would Represent a Significant Departure from, Supreme Court Precedent

Draft A alleges that Senator Bernie Sanders has "a party identification materially similar to" that of the SWP because "Senator Sanders is widely known to have adopted the 'Socialist' label during his tenure as an elected official." Draft A, at 11. Draft A further alleges that Senator Sanders' ability to "garner substantial electoral support" in the 2016 Democratic primaries and evidence from anonymous polls in two states (New Hampshire and Iowa) that there is an increased number of individuals who self-identify as Socialists "calls into question the SWP's qualification for reporting exemption." Draft A, at 11.

However, reliance on such analogies seriously misconceives, and would represent a significant departure from, Supreme Court precedent, which requires an individualized analysis and determination.

This is particularly true here where the SWP unquestionably has consistently held "definite and publicized viewpoints" that are ***so obviously distinct from*** – not "materially similar to" – those of Senator Sanders. They include: the SWP's openly calling for the establishment of a workers and farmers government that will "overturn[] the dictatorship of capital," abolish capitalism in the United States and join in the worldwide struggle for socialism; and the SWP's presentation of Cuba's socialist revolution as an example for working people in the U.S. and across the earth to emulate and defend; and the call on working people to break definitively with both the Democratic and Republican parties. *See, e.g.,* Ex. 36 (attached) (SWP Campaign statements); *Brown*, 459 U.S. at 89 ("The party states in its constitution that its aim is "the abolition of capitalism and the establishment of a workers' government to achieve socialism.").

By contrast, and as confirmed in the very same article cited by Draft A, Senator Sanders is not talking about "a form of society in which government owns or controls major industries" or a transitional form of government moving away from capitalism; "he says the kind of socialism he advocates is the Democratic socialism seen in Scandinavia and other countries in Europe. Those governments support paid sick leave, universal health care and free higher education." John Dillon, Exactly What Kind Of Socialist Is Bernie Sanders?, *NPR*, Aug. 27, 2015.

The SWP viewpoints are so unique and outside of the mainstream that *The Militant*, the periodical that editorially supports the SWP, is regularly barred from prisons. *See infra* p.12. By contrast, there is absolutely no evidence that campaign materials of Senator Sanders have been barred from prisons. What's more, Sanders' "party identification" in the 2016 election was the Democratic Party and his "party identification" on the official U.S. Senate website, like that of Maine Senator Angus King, is Independent. In fact, Sanders urged people in 2016 to reject so-called "third parties" and vote for Democrat Hillary Clinton.

Senator Sanders was not associated with the SWP in any way during 2016 election cycle, which Draft A admits. *See* Draft A, at 11.

On Draft A's suppositions, the SWP's ship should have risen with Senator Sander's tide, but, clearly, it did not, nor did it from the polls evidencing socialist identification cited by Draft A. Rather, both the SWP's vote totals and contributions remained below totals the SWP's candidates had received in prior election cycles in which exemption was granted. *See supra* pp. 8-11; *see also* Draft A, at 11.

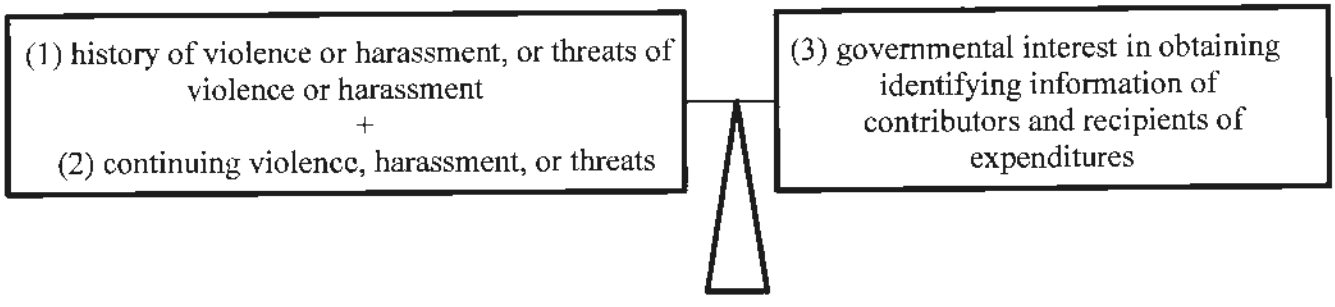
If anything, the SWP's receipt of a historically average number of votes and contributions, despite the fact that Senator Sanders received millions of votes and hundreds of millions of dollar in contributions in the Democratic Party primaries, and there was a substantial portion of the public in New Hampshire and Iowa identifying as socialists, only reinforces the fact that the public views the SWP as separate and distinct from Senator Sanders and socialists more generally.

The SWP's unique viewpoints have historically stood apart from those of other parties and, unlike the viewpoints of Senator Sanders, have provoked repeated acts of hostility, both governmental and private. The information identified by Draft A does not in any way evidence a change in this hostility.

II. Draft A Improperly Balances the Factors. A Proper Balancing of the Factors Requires Exemption.

For any one of the reasons stated above, the Commission must reject Draft A and reevaluate the SWP's Request without reliance on Draft A's analysis of the governmental interest in disclosure. A proper balancing of the factors requires the Commission to grant exemption here.

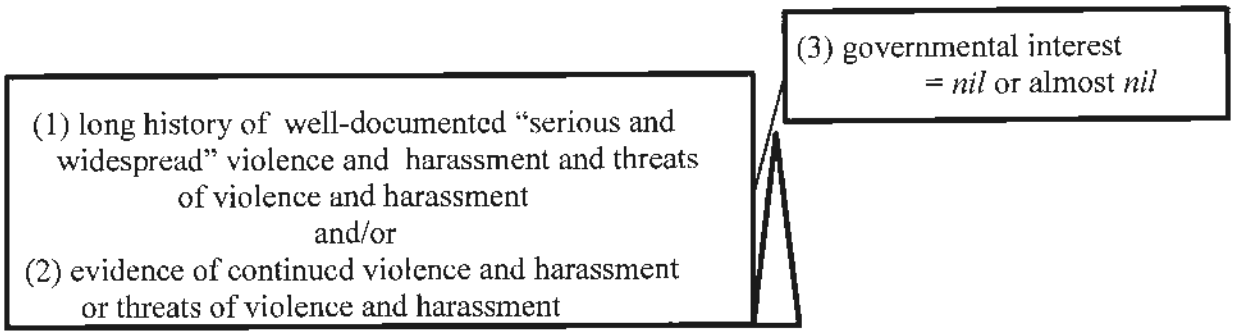
As the Commission has previously held, the Commission must determine whether there is a "reasonable probability that the compelled disclosure of a [minor] party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties" by "*weigh[ing]* three factors: (1) the history of violence or harassment, or threats of violence or harassment, directed at the SWP or its supporters by governmental authorities, including law enforcement agencies, or by private parties; (2) evidence of continuing violence, harassment, or threats directed at the SWP or its supporters since the prior exemption was granted; and, *balanced against* the first two factors, (3) the governmental interest in obtaining identifying information of contributors and recipients of expenditures." AO 2012-38, at 8 (emphasis added); *accord* AO 2009-01, at 10.



As shown, the governmental interest here is *nil* or almost *nil*. This being so, it is sufficient to require exemption that the SWP has a long and well documented history of threats, harassment and reprisals, including evidence of "serious and widespread" threats, harassment and reprisals from 1985 through 2012, which Draft A itself acknowledges. Draft A, at16. Simply balancing these two factors alone requires the Commission to grant exemption. The Supreme Court has held that a minor political party may satisfy their evidentiary burden by, among other means, providing "specific evidence of **past or present** harassment ...." *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87, 93 (1982) (emphasis added) (quoted by Draft A, at 9).

The disjunctive "or" in the Supreme Court's ruling cannot be disregarded. And, surely, the undisputed record here of 70 years of unconstitutional governmental bostility, combined with public hostility, up to 2012, must be held to satisfy the first prong of the constitutional principle. If the SWP experience does not do that, nothing does. In the face of that history, even four years devoid of any forms of private harassment or government animus would not be sufficient to deny exemption.

But, the last four years cannot be characterized in that way, and, indeed, Draft A does not even pretend they can be.



A. The SWP Has a Long History of Violence or Harassment, or Threats of Violence or Harassment, Directed at the SWP or Its Supporters

Draft A correctly acknowledges, as it must, that:

> [T]here is a long history of threats, harassment, and reprisals against the SWP and its supporters by government agencies and private parties. Courts have detailed the substantial evidence of both governmental and private hostility toward and harassment of SWP members and supporters. ... Similarly, in its prior advisory opinion requests, the SWP has provided the Commission with accounts of serious incidents of harassment by private parties over the last several decades. ... *The Commission once again recognizes the historical pattern of previous actions against the SWP as a factor weighing in favor of renewing the partial reporting*

exemption, as this history may discourage individuals from getting involved with the SWP for fear of harassment or surveillance by government agencies.

(Internal citations and quotations omitted) (emphasis added).

This record not only references incidents from between 1941 – 76 uncovered by the SWP after hard-fought federal litigation, in which the party's claims for relief prevailed, but also evidence of "*serious and widespread* physical incidents, including a brick wrapped in incendiary material thrown through the window of a local SWP headquarters, a shot fired through the window of an SWP bookstore and campaign headquarters of an SWP mayoral candidate, and widespread vandalism to SWP property" from the period between 1990-2012, as Draft A itself recognizes. Draft A, at 16 (citing Advisory Opinion 2009-01 (SWP) at 7; Advisory Opinion 2003-02 (SWP) at 7; Advisory Opinion 1996-46 (SWP) at 5) (emphasis added).

This evidence of over 75 years of "serious and widespread" threats, harassments and reprisals continuing through 2012 should alone be sufficient to estahlish that 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." *Buckley*, 424 U.S. at 74. As the Supreme Court has held, a minor political party may satisfy their evidentiary burden by, among other means, providing "specific evidence of **past or present** harassment ... A pattern of threats or specific manifestations of public hostility may be sufficient." *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87, 93 (1982) (emphasis added) (quoted by Draft A, at 9). Similarly, in *Hall-Tyner*, the court held that only a "'pattern of threats or specific manifestations of public hostility'" would be all that is necessary. *FEC v. Hall-Tyner*, 678 F.2d 416, 423 (2d Cir. 1982) (*quoting Valeo*, 424 U.S. at 74).

However, contrary to the substantial evidence provided by the SWP, Draft A then incorrectly proceeds to attempt to minimize this history. Its allegation that the "the documented instances of harassment have steadily decreased in both quantity and severity" is a patent misreading of the record. *See* Draft A, at 13. Draft A does not point to any evidence to support this claim, except to rely upon an unfounded statement by the Commission in AO 2012-38 (quoting AO 2009-01), to which the SWP objected. *Compare* Draft A, at 13 *with* Comments on AO 2012-38 (dated April 17, 2013), at 5-8; Comments on AO 2009-01 (dated March 17, 2009), at 3. Draft A cannot so simply dismiss the SWP's well-founded record of persistent harassment.

Indeed, Draft A later contradicts itself by stating that in between 1996 and 2012 "the SWP has provided the Commission with accounts of serious and widespread physical incidents." Draft A, at 16 (*citing* AO 2009-01 (SWP) at 7; Advisory Opinion 2003-02 (SWP) at 7; Advisory Opinion 1996-46 (SWP) at 5).

As the SWP has previously advised the Commission, rather than declining, *the number of documented incidents has actually increased between 1990 and 2012.*

- For the 6-year period from 1985 to 1990, the SWP documented approximately 28 incidents of threats, harassment or reprisals. *See* SWP Submission to the FEC, dated July 2, 1990.
- For the 6-year period from 1990 to 1996, the SWP documented 72 incidents of threats, harassment or reprisals. *See* SWP Submission to the FEC, dated January 17, 1997.
- For the 6-year period from 1996 to 2002, the SWP documented 74 incidents of threats, harassment or reprisals. *See* SWP Submission to the FEC, dated February 13, 2003.
- For the 6-year period from 2002 to 2008, the SWP documented 76 incidents of threats, harassment or reprisals. *See* SWP Submission to the FEC, dated January 13, 2009.
- For the shorter 4-year period from 2008 to 2012, the SWP documented 47 incidents, or proportionally roughly an equivalent number of incidents as in the prior 6-year periods (four sixths of 74 is 49, 76 is 50 and 70 is 46). *See* SWP Submission to the FEC, dated April 17, 2013.

Also, as evidenced by this record, since 1990, the SWP and its supporters have suffered a long and continuous list of serious threats, violence and harassment, including, but not limited to, having "incendiary material ... thrown ... into a local SWP headquarters ... setting the front part of the building on fire and causing considerable damage" (2009-01, at 7); bullets fired through windows of SWP's headquarters (1996-46, at 5; 1990-13, at 6); a continuous string of broken windows (2009-01, at 7; 1996-46, at 5; 1990-13, at 6); a swastika and a "White Power" slogan spray-painted on the building that housed the SWP office in Alabama (1996-46, at 5); animal parts and products, such as pigs feet, chicken livers and eggs, strewn over and shoved in the SWP's campaign headquarters in Iowa (2002 AO Request, at 33); physical assaults at informational tables (2009-01, at 7; 1996-46, at 5; 1990-13, at 6); threats of harm made in person, by phoue and by letter (2012-38, at 37, "The president of the campaign must leave town now or he will be shot on sight"; 2009-01, at 7-8 – e.g., an individual said he wanted to "put a bullet in every one of your heads"; 1996-46, at 5; 2003-02, at 7; 1990-13, at 6); and termination of employment sanctions at work (2012-38, at 34, 38-42; 2009-01, at 8; 2003-02, at 7; 1996-46, at 5).

Even though private surveillance and harassment alone can provide as powerful grounds for exemption as government action, we note that, instead of ceasing, government harassment against the SWP has persisted during the last thirty years since the federal litigation. For example, on May 16, 2007, two FBI agents arrived unannounced at the home of David Arguello, the 2006 Socialist Workers Party candidate for U.S. Cougress, in San Diego, California, on the pretense that they had information from an anonymous source that Mr. Arguello advocated violence against the U.S. Government. *See* SWP Submission to the FEC, dated October 30, 2008, at Ex. 19. The agents interrogated Mr. Arguello about his political views and activities and his interest in unionizing his workplace. *Id.* In 2000, the FBI refused to provide security clearance to an SWP supporter and presidential elector so he could become a federal census worker, even though he had scored a 97 on the exam and was labeled a "priority hire." *See* 2000 AO Request, at 37-38. In 1998, two federal officers from the Federal Protective Service were

seen taking close-up pictures of SWP supporters at a picket line protesting the U.S. policy in Iraq. *See id.*, at 42.

Draft A's insistence that the SWP provide corroborated evidence of government harassment is contrary to the requirements of the law. *See* Draft A, at 14 (dismissing evidence of government harassment in 2008 and 1996 as "uncorroborated"). The Commission never imposed such a requirement.

Moreover, this requirement would be inconsistent with longstanding Supreme Court case law establishing a "low" evidentiary standard for exemption requests by minor parties and recognizing that minor parties can "rely on a wide array of evidence to meet" its burden. *John Doe No. 1 v. Reed*, 130 S. Ct. 2811, 2823, 2827 (2010) (J. Alito concur) (citing prior Supreme Court precedent; internal citations omitted) ("The burden of proof must be low ... From its inception, ... the as-applied exemption has not imposed onerous burdens of proof on speakers who fear that disclosure might lead to harassment or intimidation."). As the Supreme Court in *Buckley* held, "unduly strict requirements of proof could impose a heavy burden ... Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim." 424 U.S. at 74. Indeed, imposing a corroboration requirement would be inconsistent with past Commission decisions. *See, e.g.*, AO 2012-38 (rejecting Draft B which, at 13-15, would have imposed a requirement that the SWP corroborate its allegations of surveillance or harassment by the government with "statement by Federal officials indicating a need to gather information on the SWP").

The Supreme Court established this low evidentiary standard for good reason, as statements acknowledging covert surveillance and/or harassment, such as the ones Draft A would require, are not easy to obtain and, in most if not all cases, would require costly and time-consuming litigation that minor political parties, such as the SWP, can scarcely afford. This is unequivocally established by the SWP's own history of covert government surveillance and actions that only came to light through extensive, hard-fought litigation and congressional investigation.

Even if it were true that there is less direct evidence of Federal government harassment, compared with the evidence obtained through litigation in the 1980s, the SWP has provided sufficient evidence that, on the basis of the long history of threats, violence and harassment against SWP supporters by the government, coupled with the well-known, documented, post-9/11 efforts of the U.S. government to monitor domestic protest organizations as well as political, advocacy and religious groups, such as labor unions, the Black Lives Matter movement and the Muslim community – all communities that the SWP actively engages and defends, there is an increasingly pervasive and reasonable fear among potential SWP supporters that their support for, or association with, the SWP will subject them to threats, violence or harassment by the government as well. The Commission has affirmed this fact time and again, holding that "the long history of Federal and local governmental harassment continues to have some present-day chilling effect despite the abatement of Federal governmental harassment." 2012-38, at 10 (citing sworn statements as to reluctance of individuals to sign petitions or subscribe to SWP

literature for fear of further scrutiny by governmental authorities, and some of these individuals cited concerns as to recent increased government surveillance); *see also* 2009-01, at 11; AO 2003-02, at 9 ("history continue to have a chilling effect ... One indication of this is the refusal of individuals to purchase or subscribe to SWP literature or circulations for fear of being included in lists maintained by the government identifying them as SWP supporters").

This "present-day chilling effect" has not gone away, but rather has persisted, as is demonstrated by the persistent number of potential SWP supporters, who refuse to support or contribute to the SWP, because of fear of government surveillance or harassment. *See* AOR 2016-23, at 42, 54-56. Draft A completely fails to consider the extensive record of potential SWP supporters, who refuse to support or contribute to the SWP, because of this fear.

In addition to being factually inaccurate, Draft A's assertion neglects the fact that this record has been sufficient for the Commission, over the last 22 years, to "conclude[] that there is a reasonable probability that contributors to, and vendors doing business with, the SWP and committees supporting SWP candidates would face threats, harassment, or reprisals if their names and information about them were disclosed." AO 2012-38, at 10.

B. Even Though It Is Not Necessary to Show Violence or Harassment in the Last Four Years, Given the Lack of Any Governmental Interest In Disclosure, and the Unique History of Government and Private Threats, Harassment and Reprisals, Were It Necessary to Make Such a Showing, the SWP Has Done So Here.

Even though, under Supreme Court precedent and the balancing test identified above, no evidence of current or recent government or private harassment or disruption need be established, the SWP, nonetheless, has provided evidence of the same, despite Draft A's attempt to minimize this evidence. *See, e.g.*, AOR 2016-24, at Exs. 1-2 (burglary into home of outspoken and well-known Socialist Workers Party member and candidate for Omaha City Council with the hallmark of an attempt at political intimidation and harassment; threats of violence against SWP supporters, including by individuals who said "You deserve to die, you commie bastard" and then asked a friend to, "Come down right away. We need to beat the shit out of him"; shattering of window at the SWP campaign headquarters in Los Angeles after a public Militant Labor Forum which had a long history over decades of attacks involving firearms and incendiary devices).

This significant evidence may not include the same number or type of incidents as in the more than 75 years prior; however, Supreme Court precedent rightly does not require the SWP to establish this. This change in the number and types of incidents is principally because (1) the SWP presidential candidate was on the ballot in fewer states than in prior election cycles, *see supra* pp. 8-10; and (2) the SWP's 2016 presidential campaign has shifted its strategy away from public tables and has focused on "going door-to-door in working-class neighborhoods, engaging workers in more extensive discussions about the character of the crisis our class faces today and the need to build the SWP and join the effort to break from bourgeois politics and take political power." Ex. BB; *cf.* AOR 2012-38, at Exs. 17, 24, 26, 16 and 18 and 22 and AOR 2009-01, at

Exs. 42, 50, 72, 51 and 56 (detailing police exhibited anti-SWP animus at public tables). Because of this new, targeted approach, more incidents of threats and harassment of SWP campaigners involved canvassers knocking on doorsteps in working-class neighborhoods and fewer at public campaign tables. Where the SWP did set up tables since 2012, it continued to encounter harassment and violence. *See* AOR 2016-24, at Ex. 3.

The SWP cannot be denied exemption here based on these changes. To do so would reduce the Supreme Court's nuanced constitutional analysis to a mechanical numbers game.

Draft A also mischaracterizes the record of recent government harassment presented by the SWP, by stating that the only evidence of government harassment provided by the SWP is of the TSA and Australian immigration authorities stopping and examining the SWP's 2016 vice presidential candidate during his travel. *See* Draft A, at 14-15.

First, Draft A's Legal Analysis and Conclusions completely ignore the nine (9) separate documented incidents in which both state and federal prison officials throughout the U.S. refused to permit inmates to receive issues of *The Militant*, the newspaper that editorially supports the SWP. *See generally* Draft A, at 8-19. These instances exhibit the continued, deep-seated government hostility toward supporters of the SWP. These actions by the prison officials were contrary to law and the prisons' own regulations and, in addition, violated *The Militant*'s and the prisoners' First Amendment rights.

The government officials' animus against the SWP has been demonstrated not only by their repeated violation of the law and the prisons' own regulations but also by the fact that the banned issues merely contained articles reporting on events that had been covered widely by media across the country, including *Time* magazine, *Ebony* magazine, and daily papers from *The New York Times* to the *Miami Herald*, none of which had any difficulties with prison authorities.

The fact that these periodicals were in most cases released, after intervention by attorneys and statements of protest by various organizations and individuals, in no way detracts from the fact that supporters of the SWP regularly are subject to government harassment. In fact, as this letter is being submitted to the FEC, the *Militant* has never yet been informed of the results of its challenge to censorship of issues of the paper last fall by Attica Correctional Facility officials in New York State, and three issues have recently been denied to an inmate subscriber at Illinois River Correctional Center in Illinois, censorship that the paper is challenging but has not yet been resolved.

Second, despite Draft A's allegation to the contrary, "[s]urveillance of groups *other* than the SWP … that 'engage in activism concerning issues that are also the subject of SWP activity'" provides strong "support for the probability of future government harassment of the SWP." Draft A. at 5, 15.

The fact that such well-known and widely respected mainstream organizations as the Quakers and Catholic Thomas Merton Center may be the subject of federal government

surveillance, surely makes reasonable the belief of a current or potential SWP supporter that their association with the SWP, with a long-history of government surveillance and beliefs outside of the mainstream, will subject them to surveillance by the federal government.

Draft A's dismissal of the SWP's evidence of ramped up surveillance efforts by the government because "neither the request nor the cited reports suggest that the SWP has recently been under surveillance or otherwise interfered with by the federal government" is without basis. *See* Draft A, at 6-7. Evidence of government surveillance of groups, which engage in activism concerning issues that are also the subject of SWP activism, provides a strong indication that the government is also currently surveilling the SWP. This is further supported by recent evidence of government surveillance of events in which the SWP actively participated. Evidence of government surveillance of groups that engage in activism concerning issues that are also the subject of SWP activism also supports the fact that there is a "reasonable probability" that association with the SWP "will subject [SWP supporters] to threats, harassment or reprisals from either Government officials or private parties." *Buckley*, 424 U.S. at 74.

As it is difficult, costly and time-consuming to uncover government surveillance and harassment tactics, as evidenced by the SWP's prior experiences with federal litigation and groups like the ACLU's current experience with trying to uncover improper government surveillance, using evidence of surveillance and harassment of other similar groups is absolutely consistent with the Supreme Court's longstanding case law establishing a "low" evidentiary standard for exemption requests by minor parties and recognizing that minor parties can "rely on a wide array of evidence to meet" its burden. *John Doe No. 1 v. Reed*, 130 S. Ct. 2811, 2823, 2827 (2010) (J. Alito concur). As the Supreme Court in *Buckley* held, "unduly strict requirements of proof could impose a heavy burden ... Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim." 424 U.S. at 74.

Indeed, Draft A itself is willing to support its unfounded allegation that "the electoral success of a candidate with a party identification materially similar to the party at issue here" significantly increases the governmental interest in disclosure without providing a *scintilla* of evidence that the ideology of Senator Sanders is "materially similar" to that of the SWP, *see supra* pp. 12-13; however, when it comes to the SWP *documented* government surveillance of political groups engaged in activism concerning issues that are also the subject of SWP activity, Draft A wrongfully dismisses this evidence as "not applicable to the SWP." Draft A, at 15.

Third, Draft A appears to require the SWP to come forward with evidence that the TSA and Australian authorities were targeting the SWP by stating that "the information submitted does not indicate whether the officials in either country even knew of his connection to the SWP." Draft A, at 14. The SWP had presented evidence that, despite having previously cleared security in New Zealand and not left the secured boarding area, the SWP's candidate for Vice-President was "*singled out* and subjected to multiple extensive searches before boarding an American Airlines flight traveling back." Short of the agents' explicitly informing the SWP Vice-Presidential candidate that the search was politically motivated, it is hard to see what evidence Draft A would seek. Draft A's demand for additional information is inconsistent with

the "low" evidentiary standard for exemption requests imposed by Supreme Court precedent. As the Supreme Court in *Buckley* held, "unduly strict requirements of proof could impose a heavy burden ... Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim." 424 U.S. at 74.

III. Draft A Applies a Legal Standard that Represents a Significant and Unwarranted Departure from Well-Established Supreme Court Case Law.

A. Contrary to Draft A's Assertion, the SWP Does Not Need to Submit Evidence of Serious Harassment and Reprisals.

Long-standing Supreme Court and FEC precedent does not require that the applicant provide evidence of "serious" harassment and reprisal, as Draft A states at 17, 12-13, but rather only that they establish "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." *Buckley*, at 74. Draft A relies upon no case law or Commission precedent to support this novel and unwarranted legal requirement.

B. Draft A's Reliance on *ProtectMarriage.com v. Bowen* Is Completely Misplaced

Draft A's reliance on the district court case *ProtectMarriage.com v. Bowen*, 830 F. Supp. 2d 914, 933 (E.D. Cal. 2011) (reporting requirements applied to ballot committees supporting passage of California's Proposition 8 concerning marriage) is completely misplaced. In denying the plaintiffs protection under *Buckley*, the court in *ProtectMarriage.com* went to great lengths to distinguish the SWP from the plaintiffs in that case:

> Unlike the facts in *Brown* [*v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87 (1982)], the proponents of Proposition 8 succeeded in persuading over seven million voters to support their cause. They were successful in their endeavor to pass the ballot initiative and raised millions of dollars in the process. This set of circumstances is a far cry from the sixty-member SWP party, repeatedly unsuccessful at the polls, and incapable of raising sufficient funds. Indeed, it became abundantly clear during oral argument that Plaintiffs could not in good conscience analogize their current circumstances to those of either the SWP or the Alabama NAACP circa 1950.
>
> ...
>
> Since *Buckley*, as-applied challenges have been successfully raised only by minor parties, specifically those parties, as discussed, having small constituencies and promoting historically unpopular and almost universally-rejected ideas. As stated, in *Brown*, the SWP consisted of only sixty members in Ohio. The parties' 'aim was the abolition of capitalism and the establishment of a workers' government to achieve socialism.' The party was historically unsuccessful at the polls though its members regularly ran for public office. Additionally, 'campaign contributions and expenditures ... averaged approximately $15,000 annually.'

> ....
>
> Plaintiffs do not, indeed cannot, allege that the movement to recognize marriage in California as existing only between a man and a woman is vulnerable to the same threats as were socialist and communist groups, or, for that matter, the NAACP. Proposition 8 supporters promoted a concept entirely devoid of governmental hostility. Plaintiffs' belief in the traditional concept of marriage, to disagreement, have not historically invited animosity. The Court is at a loss to find any principled analogy between two such greatly diverging sets of circumstances.

830 F.Supp.2d at 928-32 (emphasis added) (internal citations omitted).

Nonetheless, Draft A relies upon *ProtectMarriage.com* to support denial of exemption as well as the following two propositions:

1. "The SWP must establish that it 'lacks adequate recourse to pursue means short of non-disclosure' to protect against any unlawful interference before it can be granted a reporting exemption." Draft A, at 17 (internal citation omitted); and

2. "[M]any 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.'" Draft A, at 17 (internal citation omitted).

Draft A's proposition 1 is completely without basis in law for two reasons. First, the court in *ProtectMarriage.com* explicitly exempted the SWP from its holding in that case – "**[c]ontrary to groups such as the SWP**, Plaintiffs can seek adequate relief from law enforcement and the legal system." 830 F.Supp.2d at 932 (emphasis added). The SWP was explicitly exempted because, among other reasons, plaintiffs in *ProtectMarriage.com* "[did] not, indeed [could] not, allege that the movement to recognize marriage in California as existing only between a man and a woman" was a minor party and thus "vulnerable to the same threats as were socialist and communist groups, or, for that matter, the NAACP." *Id.* at 931. Second, neither the Supreme Court, the Commission nor any other court, to our knowledge, has required that, in order to be entitled to exemption from FEC reporting requirements, a minor party must prove that it "lacks adequate recourse to pursue means short of non-disclosure" to protect against any unlawful interference. Neither Draft A nor the court in *ProtectMarriage.com* cite to anything to support this position.

Draft A's proposition 2 simply mischaracterizes the record provided by the SWP and views these instances in isolation as opposed to in the context of the evidence presented as a whole, as well as the historic record, which, when taken together, undoubtedly reveal a pattern of public hostility toward the SWP. Draft A does not identify which incidents specifically it is referring to or how many incidents would qualify as "many." Moreover, when taken together with the evidence of widespread fear of harassment among potential SWP supporters, it is clear that even

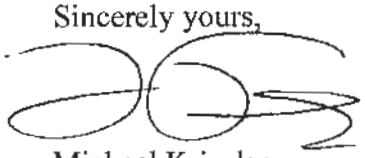
seemingly "minor" incidents takes on a unique meaning when viewed, as it is and must be viewed, in the context of the long history of threats, violence and harassment by the government and private parties and the stepped-up surveillance of domestic groups by the government post 9/11.

CONCLUSION

Based on the foregoing, and on the SWP's filing dated October 30, 2016, the SWP respectfully requests that the Commission grant the SWP a partial reporting exemption until December 31, 2020.

Thank you for your attention to this matter.

Sincerely yours,



Michael Krinsky
Lindsey Frank

EXHIBIT 34

DECLARATION

I, John Studer, make this declaration in support of the application to the Federal Election Commission for an advisory opinion that the Socialist Workers Party, the SWP's National Campaign Committee, and the committees supporting the candidates of the SWP are entitled to exemption from certain disclosure provisions of the Federal Campaign Act.

I make this declaration on the basis of my personal knowledge.

1. I am the campaign director for the Socialist Workers National Campaign Committee and have been active in support of candidates of the Socialist Workers Party for more than forty-four years.
2. The SWP has run candidates for President since 1948 and for other federal, state and local offices.
3. In my experience, and based on my knowledge of the party's campaigns for public office, including during the four (4) years since the Commission last granted the SWP exemption from FECA disclosure requirements (2013-16), the SWP has never received a large or unexpected donation from a non-traditional donor, in close races or otherwise.
4. In my experience, and based on my knowledge of the party's campaigns for public office, including during the last four (4) years since the Commission last granted the SWP exemption from FECA disclosure requirements (2013-16), the SWP has never been approached by a major party contender, or anyone else, in an attempt to have the SWP divert votes to aid their campaign.
5. It would be entirely contrary to SWP's policy and purpose to divert votes. The SWP does not run candidates in order to effect which other party or candidate will win an election, or to obtain favor or benefit or influence with any other political party, candidate or office holder. Rather, it runs its candidates solely to advocate for its own, entirely distinct and independent point of view. The entire record of SWP policy and practice, as shown in the federal litigation, *Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357, 1366 (S.D.N.Y. 1986), and the SWP's submissions to the FEC, confirms this.

I declare under penalty of perjury that the foregoing is true and correct. Executed in New York, New York, on February 15, 2017.

John Studer
February 15, 2017

EXHIBIT 35

1982 WL 608509 (U.S.) (Appellate Brief)
Supreme Court of the United States.

Ted W. BROWN, et al., Appellants,
v.
SOCIALIST WORKERS '74 CAMPAIGN COMMITTEE (OHIO) et al., Appellees.

Case No. 81-776.
October Term, 1981.
March 30, 1982.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

Brief for Appellees

Thomas D. Buckley, Jr., Counsel of Record, Gordon J. Beggs, American Civil Liberties Union of Cleveland Foundation, 1223 West Sixth Street, Cleveland, Ohio 44113, (216) 687-2309, (216) 781-6276, Ben Sheerer, Suite 611, 614 Superior Avenue West, Cleveland, Ohio 44113, Bruce Campbell, 360 South Third Street, Columbus, Ohio 43215, Attorneys for Appellees

***i** QUESTIONS PRESENTED

I. Whether the financial disclosure provisions of the Ohio Campaign Expense Reporting Law are unconstitutional as applied to the Socialist Workers Party (SWP), which raises amounts averaging about $15,000 for all candidates state-wide, as violative of First and Fourteenth Amendment associational privacy rights, on the basis of a record which includes proof that:

a) 7% of the Ohio SWP membership was fired because they belonged to the SWP in the one year period before trial; and

b) politically motivated assaults and batteries were committed against two of the fired SWP members, within one year of trial; and

***ii** c) Nazi threats to kill people (within one year of trial) if an Ohio SWP meeting were held were frustrated, after the Nazis appeared outside the meeting place, when the SWP called in police protection; and

d) the Ohio SWP received other threats of harm and violence, face to face, on the phone and by mail (from out of state) from local police and others, within one year of trial; and

e) at least eighteen other SWP members were fired because of their SWP politics, outside of Ohio, within one year of trial; and

f) other violent attacks on the SWP, including one shooting, occurred ***iii** in a neighboring state, within one year of trial; and

g) pervasive public and private hostility toward the SWP past and present, nationally and within Ohio, is a fact of life; and

h) the totality of the circumstances (i.e. voluminous other evidence also) establishes the "reasonable probability" that compelled disclosure in Ohio of the names and addresses of people who give money to or receive money from SWP election campaigns will subject such people to "threats, reprisals and harassment."

II. Whether the Ohio Campaign Expense Reporting Law, which is supported by markedly weaker "governmental interests" than the federal law ***iv** upheld in Buckley v. Valeo, 424 U.S. 1 (1976), but which, unlike the federal law, has no rational monetary "threshhold" for disclosure, is unconstitutional on its face.

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Cases:

***1 STATEMENT OF THE CASE**

This case was instituted as a class action in 1974 to challenge the disclosure provisions of the Ohio Campaign Expense Reporting Law (Ohio Revised Code § 3517.01 et seq.) as unconstitutional (1) on their face and (2) as applied to the plaintiff class. The claim for relief arises under 42 U.S.C. 1983; district court jurisdiction was based on 28 U.S.C. 1343(3).

The Ohio Campaign Expense Reporting Law requires disclosure to the public of the identities and addresses of the financial supporters of every candidate for local, state and federal office in Ohio. [O.R.C. 3517.10 and 3517.11.] The Reporting law also requires disclosure to the public of the identity and address of everyone who receives a campaign expenditure.

***2** The statute requires every candidate to authorize a single campaign committee to receive contributions and make expenditures. All contributions to a campaign committee and all its expenditures must be made through a campaign treasurer appointed by the candidate. The campaign treasurer, on behalf of the committee, must file pre-election and post-election sworn statements of contributions and expenditures. The filed statements must itemize separately all contributions and all expenditures, no matter how small in amount, and must list the full name and address of each contributor and each recipient of an expenditure. Statements listing the names and addresses of contributors and recipients are open to public inspection in the office where they are filed for a period of at least six years.

***3** The Reporting law provides for two exceptions to these disclosure requirements:
(1) The name and address need not be reported of a person who contributes $25 or less if such contribution is made at a "social or fund-raising activity"; [O.R.C. 3517.10(B)(4)(e)] and

(2) If a contribution is made by a "continuing association" from dues collected from members of the continuing association, the names and addresses of the members need not be disclosed. [Id.]

There are no limitations in Ohio law on the amount of campaign contributions.

Violations of the disclosure requirements are punishable by fines, of up to $1,000 for each day of violation.

***4** The plaintiffs are Socialist Workers Party (hereafter, "SWP") candidates for local, state and federal office in Ohio, their campaign committees and campaign treasurers, unnamed contributors and recipients of campaign funds, and the class of similarly situated persons.

The defendants are the Ohio Secretary of State and other state and local officials who administer the disclosure law.

A temporary restraining order was entered in the Northern District of Ohio. The case was then transferred to the District Court for the Southern District of Ohio where the temporary restraining order was filed again in February 1975.

By agreement the parties gave the restraining order class-wide effect pending determination on the merits. Plaintiffs have not disclosed the names ***5** and addresses and amounts given of contributors or of recipients of funds, but have otherwise complied with the reporting requirements of the challenged statute.

The case was certified as appropriate for a three-judge panel under 28 U.S.C. 2281 and District Judges Kinneary and Duncan and Senior Circuit Judge Peck were designated as panel members.

Discovery proceeded. More than 30,000 highly excised pages of files on the SWP and its youth affiliate, the Young Socialist Alliance (often referred to hereafter as the "YSA") were eventually released to the plaintiffs from the Cleveland office of the FBI under order of the District Court.

Trial was held on February 23, 1981, the factual record being made before Judge Kinneary alone.

On June 25, 1981 the three-judge ***6** court held that the provisions [O.R.C. 3517.10(b)(4)(b), (5)(b) and 3517.11] of the Campaign Expense Reporting Law requiring disclosure of the name and address of contributors to, and recipients of funds from campaign committees were unconstitutional as applied to the plaintiff class, and enjoined their enforcement against the plaintiffs. The class simultaneously certified by the District Court consists of: "All Socialist Worker Party candidates for Ohio state-wide or local elected political office, their campaign committees, their campaign treasurers, and the people who contribute to or receive disbursements from their campaign committees."

The Defendants' appealed, and this Court noted probable jurisdiction.

*7 SUMMARY OF ARGUMENT

The decision below granting plaintiffs an exemption from the reporting requirements of the Ohio Campaign Expense Reporting Law should be affirmed because the law is unconstitutional as applied to the plaintiffs, and on its face.

The Ohio law requires public disclosure of the names and addresses of all election campaign contributors, and recipients of campaign funds. In Buckley v. Valeo, 424 U.S. 1 (1976), the Court upheld the public disclosure provisions of the Federal Campaign Expense Reporting Act, which it is similar to but also significantly different from the Ohio law. The Court in Buckley also held that "minor" parties could qualify for an exemption from disclosure requirements, on the basis of the contributors' and ***8** recipients' First Amendment rights of associational privacy and political anonymity. NAACP v. Alabama, 357 U.S. 449 (1958) and Shelton v. Tucker, 364 U.S. 479 (1960) and other cases upholding those rights were adhered to, and cited as the basis for the constitutional necessity of an exemption from disclosure for minor parties which established 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." Buckley at 74.

The three-judge court below held that the SWP was a minor party, and that plaintiffs had established a "reasonable probability" of future injury if disclosure were compelled. The court therefore held the Ohio law unconstitutional as applied to the ***9** plaintiff class and enjoined its enforcement against them. The Court earlier had rejected plaintiff's claim that the Ohio law was unconstitutional on its face.

There is no dispute concerning the Socialist Workers Party's status as a "minor" party in the Buckley v. Valeo sense. In 1980, its Ohio senatorial candidate got only about seventy six thousand votes or 1.9% of the total. Contributions received and expenditures made in its Ohio campaign have averaged about (sic)twelve(sic) thousand dollars since 1974. Like the typical minor party envisioned in Buckley, the SWP's positions are ideologically arrived at, and the public knows more about where an SWP candidate stands on the issues than can be determined ordinarily from the Democrat or Republican party label.

***10** Plaintiffs proved that disclosure of the names and addresses of contributors and recipients would be dangerous to them in the future, by establishing that twenty-two SWP members had been fired on account of their SWP politics during the one year period just preceding trial. Plaintiffs also proved politically motivated assaults and batteries committed in 1980 against two of the SWP firing victims before they were fired, a 1981 shooting incident at an SWP office, the 1980 burning of an SWP candidate's car, and the 1980 ritual burning of SWP campaign literature. Also in 1980 Nazis threatened that people would be killed if an SWP campaign rally were held and appeared outside the meeting place until police protection was called in by the plaintiffs.

Of these 1980-81 events, some occurred in Ohio and some did not. ***11** Specifically, 7% of the Ohio SWP members, four out of the sixty, were fired during the year before trial, because they belonged to the SWP. The assaults and batteries also occurred in Ohio. The Nazis appeared at a Cleveland SWP meeting after making the threats to kill. And various other telephone and face to face threats were also made in Ohio during that year.

The shooting incident took place in Pittsburgh. The auto burning, and literature burning also took place there. Fifteen SWP members were fired in Georgia; and three in New York.

The State's position that the evidence in this case is "stale" and that incidents of harassessment in Ohio are "isolated" is simply inconsistent with the realities of the record made below.

The events did not occur in a vacuum. They are typical results of the ***12** long standing official government hostility and widespread private antipathy toward the SWP which is also documented in the record. Much of that "historical" evidence, as the State would like to characterize it, concerns events that occurred while this case was pending in the District Court.

The court below is one of seven courts or state administrative agencies which have come to the conclusion that the SWP needs an exemption from campaign expense disclosure laws and that the constitution grants it the right to an exemption.

The Ohio law is also unconstitutional on its face. It has no "threshhold" for disclosure. Every contribution, no matter how small in amount, must be reported and disclosed to the public. The federal law upheld in Buckley had a one hundred dollar threshhold for ***13** disclosure. Ohio law differs from federal law also in not imposing any limits on the amount that a person can contribute to an election campaign. Detection of violations of the contribution limits was one of the three "government interests" which justified First Amendment infringement in Buckley. There is thus less State interest supporting the Ohio law than there was federal interest justifying federal disclosure. At the same time, the Ohio statute is more restrictive of First Amendment rights, requiring that people making very small political contributions be identified publicly.

The State has never demonstrated any rational basis for requiring that every $5, $10, or $15 contribution be made public. In an area where precision in regulation and least restrictive means to an end are the constitutional standards, ***14** the Ohio law, which is one of only six state laws without a threshhold, is invalid on its face.

ARGUMENT

I

APPLICATION TO THE PLAINTIFFS OF THE DISCLOSURE PROVISIONS OF THE OHIO CAMPAIGN EXPENSE REPORTING LAW INFINGES ON ASSOCIATIONAL RIGHTS PROTECTED BY THE FIRST AND FOURTEENTH AMENDMENTS.

Application to the plaintiffs of the challenged disclosure provisions of the Ohio Campaign Expense Reporting Law would reveal to the public the name and address of every person who contributed money to a Socialist Workers Party election campaign in Ohio. There would be no exceptions.

***15** The "continuing association" loophole has the effect of allowing labor unions to make political contributions from the "regular dues" paid by members without disclosure of the names of the members themselves. It is of no practical use to the plaintiffs in this case. Even if theoretically useful, its operation would force a contributor to abandon the right not to join an association as the price of political anonymity.

The "twenty-five dollar" exemption for contributions made at a "social or fund-raising activity" would in itself require the contributor to appear in public at an SWP event, and thus abandon real anonymity.

The District Court's decision which holds these provisions unconstitutional as applied to the plaintiffs is consistent with the history of political anonymity in this country, and it is ***16** correct under the decisions of this Court.

Political anonymity is a right that was respected by the Founding Fathers. They practiced it themselves: Hamilton, Madison and Jay published the Federalist Papers under the name "Publius." (Beard, The Enduring Federalist, vi). Chief Justice John Marshall issued anonymous defenses of the work of the Supreme Court. (Beveridge, The Life of Marshall 313-19). "Between 1789 and 1809 no fewer than six presidents, 15 cabinet members, 20 senators, and 34 congressmen published political writings, either unsigned or under pen names." (Comment, The Constitutional Right to Anonymity: Free Speech, Disclosure and the Devil, 70 Yale L.J. 1084)

We take the secret ballot for granted, but public voting either by a show of hands or by voice vote was once ***17** the predominant American method for choosing elected officials. "Its deficiencies were that it invited intimidation, reprisals and retaliation against persons for the way they voted." [Neuborne & Eisenberg, The Rights of Candidates and Voters, page 50, 1980]. As a consequence, by the middle of the 19th century, most states had adopted the written ballot. And by the turn of the century a majority of states had adopted the further reform of the truly secret "Australian" ballot which was prepared by election officials and carried the names of all the candidates. [Id. at 51]. "[O]ne of the great political reforms was the advent of the secret ballot as a universal practice." Buckley v. Valeo, 424 U.S. 1, at 237 (Burger, C.J. separate opinion).

Our traditional respect for political privacy and the nation's experience of ***18** its practical value are reflected in the cases and in the literature. "Anonymity has long been recognized as absolutely essential for the survival of dissident movements; the glare of public disclosure, so healthy in other settings, may operate in the context of protected but unpopular groups or beliefs as a clarion call to ostracism or worse." [Tribe, American Constitutional Law 707].

The decisions of this Court which bear on associational privacy, political anonymity, and the regulation of the electoral process are all in point and support the District Court's conclusion that the Ohio disclosure law as applied to the plaintiffs is unconstitutional. The leading cases are NAACP v. Alabama, 357 U.S. 449 (1958), and Bates v. Little Rock, 361 U.S. 516 (1960), which upheld the right of the NAACP to maintain the confidentiality of its membership lists ***19** in the face of official demands for disclosure. The Court reasoned that compelled disclosure would enfringe the members' freedom of association and that the State and city had not demonstrated a governmental interest in disclosure sufficient to justify deterrence of the exercise of a protected right. In both cases there was uncontroverted evidence that disclosure of members' identities had in the past led to harassment and reprisal.

Talley v. California, 362 U.S. 60 (1960), upheld the right to distribute handbills and leaflets anonymously. Shelton v. Tucker, 364 U.S. 479 (1960), struck down a state statute which required school teachers, as a condition of employment, to disclose every organization they had belonged to during the previous five years. In Talley, the court noted that:
***20** "Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all. * * * It is plain that anonymity has sometimes been assumed for the most constructive purposes." 362 U.S. at 64-65.

The right to maintain the confidentiality of NAACP lists was upheld again in Gremillion v. NAACP, 366 U.S. 293 (1961) and Gibson v. Florida Legislative Investigating Committee, 372 U.S. 539 (1963). Similarly, the right of applicants for admission to the bar to remain silent concerning organizational membership was upheld in Baird v. Arizona, 401 U.S. 1(1971), and In Re Stolar 401 U.S. 23 (1971).

In Pollard v. Roberts, 283 F. Supp.. 248 (D. Ark. 1968), aff'd 393 U.S. 14 (1968) the same principles were applied ***21** to prevent compelled disclosure of the records of contributors to the Republican party in Arkansas. The three judge court observed that:
"Disclosure or threat of disclosure well may tend to discourage both membership and contributions thus producing financial and political injury to the party affected. * * * For various reasons, individual fear of reprisal or harassment, the possibility of disclosure of their party affiliations and contributions, if any, tends to inhibit citizens from exercising their right to participate meaningfully in American political life." 283 F. Supp. at 258.

The cases in this Court dealing with American political life also support the minor party interest at stake here. In Sweezy v, New Hampshire, 354 U.S. 234 (1957), the Court upheld the right of a member of the Progressive Party to remain silent about the party and its members, when questioned by a state legislative investigating committee. The Court said:
***22** "Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the medium of political associations. Any interference with the freedom of a party is simultane eously an interference with the freedom of its adherants. All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted.

Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society." 354 U.S. at 250-51.

The rights of minor parties and their supporters have also been vindicated in the decisions of this Court which deal directly with the electoral process. State laws regulating ballot access must pass a strict scrutiny test. Statutes ***23** which freeze the two-party status quo and keep minor parties off the ballot have been stuck down. Williams v. Rhodes, 393 U.S. 23 (1968); Storer v. Brown, 415 U.S. 724 (1974); Illinois Election Board v. SWP, 440 U.S. 173 (1979). Such cases raise the question of "how to accommodate the desire for increased ballot access with the imperative of protecting the integrity of the electoral system from the recognized dangers of ballots listing so many candidates as to undermine the process of giving expression to the will of the majority." Lubin v. Panish, 415 U.S. 709 (1974), at 714. The answer has never been to impose requirements for meaningful access to the electoral process which were too difficult to be achieved. Jenness v. Fortson, 403 U.S. 431 (1971). Special treatment for minor parties has been the rule. In Jenness, the court upheld the Georgia ballot ***24** access law (as applied to the SWP) precisely because it was tailored for the special needs of small parties, saying:
"Georgia has not been guilty of invidious discrimination in recognizing these differences [between major and minor parties] and providing different routes to the printed ballot. Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike, a truism well illustrated in Williams v. Rhodes, supra." 403 U.S. at 441-42.

The freedom of association and political anonymity cases, and the election regulation cases intersected in Buckley v. Valeo 424 U.S. 1 (1976), which considered the disclosure provisions of the Federal Campaign Expense Act, a statute which unlike Ohio's law compelled public disclosure only of contributions in excess of $100. Since Buckley, the federal statute has been amended and the threshold for disclosure is now $200.

***25** The Court in Buckley recognized that the application of campaign finance disclosure provisions to minor parties raised special First Amendment problems:
"We are not unmindful that the damage done by disclosure to the associational interests of the minor parties and their members and to supporters of independents could be significant. These movements are less likely to have a sound financial base and thus are far more vulnerable to falloffs in contributions. In some instances fears of reprisals may deter contributions to the point where the movement cannot survive." Buckley at 71.

It was argued in Buckley, in the light of such considerations, that a blanket exemption for all minor parties was required "because the 'evils' of 'chill and harassment ... are largely incapable of formal proof"'. The court held that a blanket exemption was not required. But ***26** it did so only because of its formulation of a constitutional standard for case by case minor party exemption which took the problem of proof into consideration. The court said:
"We recognize that unduly strict requirements of proof could impose a heavy burden, but it does not follow that a blanket exemption for minor parties is necessary. Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment or reprisals from either Government officials or private parties. The proof may include, for example, specific evidence of past or present harassment of members due to their associational ties, or of harassment directed at the organization itself. A pattern of threats or specific manifestation of public hostility may be sufficient."

*****

Where it exists the type of chill and harassment identified in Alabama can be shown. We cannot assume that courts will ***27** be insensitive to similar showings when made in future cases. We therefore conclude that a blanket exemption is not required. 424 U.S. at 74.

Of the cases cited by the State in defense of the application to the plaintiffs of the Ohio disclosure law, only one was decided since Buckley: Nixon v. Administrator of General Services, 433 U.S. 425 (1977). Rather than supporting the statute, it

reemphasizes the dangers to privacy rights posed by public disclosure of confidential information. The Court upheld the GSA's archival screening methods as applied to Richard Nixon's White House papers, but observed that "the extent of any . . . [First Amendment] burden, however, is speculative in light of the Act's terms protecting appellants from improper public disclosure and guaranteeing him full judicial review before any public ***28** access is permitted." 433 U.S. at 467. What saved the federal act, even as applied to information of enormous importance and great public interest, was the fact that it would not be disclosed to the public.

II

PLAINTIFFS MET THE BUCKLEY V. VALEO STANDARD OF PROOF

The constitutional standard for minor party exemption from an otherwise valid election disclosure law is the one stated in Buckley: evidence showing "a reasonable probability" that the compelled disclosure of the party's contributors' names will subject them to threats, reprisals and harassment.

For the Socialist Workers Party, the minor party in this case, that standard was not hard to meet. The factual record is reviewed here under the headings: A) The SWP is a Minor Party; B) There is ***29** General Public and Private Hostility To the SWP, Its Members and Supporters; C) There are Innumerable Proven Examples of Threats, Reprisals and Harassment Directed at the SWP and its Supporters; and D) Disclosure Would Deter Contributions to SWP Campaigns.

A. The SWP is a Minor Party.

The Socialist Workers Party is a "minor party" in the sense that term was used in Buckley v. Valeo. There are about 60 SWP members in Ohio. The SWP's constitution states that the party's purpose is "to educate and organize the working class for the abolition of capitalism and the establishment of a workers' government to achieve socialism." [JS A-13.] (The District Court noted the "uncontroverted testimony that the SWP does not seek violent confrontation with the police and does not advocate taking arms against the ***30** government. Instead, it seeks to win over the masses to revolution through ... political methods....") [Id.] The SWP candidate for U.S. Senate from Ohio in 1980 received a little over 76,000 votes less than 1.9% of the total. [J.A.-20] The SWP has little chance of winning an election. Political positions adopted by the SWP's national organization are binding on its local candidates. [JS A-13]. Its "definite" and "publicized viewpoints" can be discerned by the public from the parties' ideological position. The SWP's financial base is also typical of the minor party described in Buckley v. Valeo. Total contributions made to the SWP candidates in Ohio were $12,118 in 1974, $21,929 in 1976, and $11,912 in 1978. [Exh C, D, E, F, G, H, I, M, O, P and Q.]

***31** B. There is General Public and Private Hostility to the SWP, Its Members and Supporters.

Public and private hostility toward the SWP has been common for decades. (Indeed the record of federal hostility and federal harassment is so overwhelming that to trace its outlines here, as we must, is apt to give the same false impression the government has tried over the years to give to the public: that the SWP is some kind of criminal conspiracy set upon subverting out institutions by illegal means. In fact the SWP's only crime has been to be unpopular. The history of federal government-SWP interaction is before the court in Socialist Workers Party v. Attorney General (No. 73 Civ. 3160 S.D. N.Y.) In that case, the trial judge "asked the Government to come forward with any indication whatever of violent ***32** revolutionary activity or any other illegal activity carried out by the YSA or SWP, and the Government [came] forward with absolutely nothing." 387 F. Supp. 747, at 752 (1974) vacated in part on other grounds, 510 F.2d 253 (2d Cir. 1974), aff'd, 419 U.S. 1314 (1974) (Marshall, J.)

The government's official anti-SWP policy is a matter of public record. For example, members and supporters have been barred from government employment, Gordon v. Blount, 336 F. Supp. 1271 (D. D.C. 1971); subjected to deportation proceedings, Scythes v. Webb, 307 F.2d 905 (7th Cir. 1962); and given undesirable military discharges, Stapp v. Resor, 314 F. Supp. 475 (S.D. N.Y. 1970).

The trial record establishes that the federal government's anti-SWP policy was executed by at least nine agencies: ??

NOTE: Page 33 illegible in original document.

***34** ?? SWP and its youth affiliate, the Young Socialist Alliance, as "Trotskyite" groups and as the "largest and probably the best organized revolutionary organizations in the U.S." [Exh. 85]. Since there is no reason to believe that that federal assessment has ever been revised, the SWP is obviously a prime target for the CIA under its new mandate for domestic activity.

In the past there have been similar shifts in the federal plan for the SWP. Over the years, the techniques employed and the role of particular federal agencies have varied from time to time. In 1976, under enormous p??-Watergate pressure, and after the exposure of its notorious COINTELPRO operation, the FBI announced that the "internal security" aspect of its investigation of the SWP was at an end. There is also some evidence that in the past the Civil ***35** Service Commission stopped its anti-SWP activity. [Exh 129, Finding of Fact 215] But there is no record evidence, and no information outside the record, that other agencies such as Military Intelligence and the Secret Service have ever stopped their SWP investigations. On the contrary, what has been consistent about federal policy toward the SWP over the years is the zeal with which the government has pursued its anti-SWP goals despite what may appear to the public to be changes. Thus, in 1974, when the Attorney General's list was abolished, the FBI's "predicate" for investigating the SWP and YSA disappeared. The agency, however, never veered from course, merely wrote a new boiler- plate predicate and continued the investigation unchanged. [Exh.103 and 42] Even when agencies may have ended their formal investigations, the bureaucratic hostility built into the ***36** system causes the old policies to be self-executing in the present. Thus, in 1978, the FBI in Cleveland responded to a routine "name-check" request from the Civil Service Commission by identifying the subject of the name-check as having two brothers who had been the "subject of internal security type investigations by the Cleveland office of the FBI." [JA 94-95] The FBI meant SWP or YSA investigations, but did not name the organizations as such. (The letter was put in an FBI file dealing with the "Socialist Activist Educational Conference Sponsored by the Socialist Workers Party (SWP) and the Young Socialist Alliance (YSA) Oberlin, Ohio, 8/17-24/74.")

The degree of federal hostility is reflected in the magnitude of its efforts. The District Court found that:
"FBI surveillance of the SWP was massive. The ***37** Government possesses about 8,000,000 documents relating to the SWP, the YSA (the SWP's youth organization) and their members." [JS A-14]

Surveillance methods included the use of member informants, "surreptitious entries", recruitment of citizens to monitor SWP activities, direct electronic surveillance, and a mail cover. [JA 99-101]

The FBI used approximately 1300 informants in its part of the SWP investigation. Three hundred of these informants were SWP or YSA members. Of the 300 member informants, approximately 21 held local branch offices within the party. Three such informants even ran for elected office as SWP candidates. Member informants infiltrated the SWP branches in Cleveland and Cincinnati. Eighteen typical informants were paid $358,648.38 for their services and expenses. [JA 99-105; JS A-15, 16]

***38** While implacable hostility toward the SWP is obvious from the magnitude of the FBI's surveillance operation, surveillance was only a part of the total federal approach to the SWP and its supporters: "Threats, reprisals and harassment" were official policy. For a while, between 1961 and 1971, that policy was formally labeled the FBI's "SWP-Disruption Program." [JA 98] It was undertaken as part of the FBI's well known "COINTELPRO" operation.

The government's purpose in establishing the SWP-Disruption program was to impair the functioning of both the SWP and the YSA. The FBI drafted anonymous letters, which it sent to members and supporters, and which were calculated to demoralize the recipients and sow dissention within the organizations. [Id.] The plans for an elaborate "dirty trick" are set out in ***39** Exhibit 106, the internal FBI correspondence describing the government's success at suppressing First Amendment political speech by the SWP at a school teachers conference in Cleveland. At least forty-six separate COINTELPRO activities were approved and implemented against the SWP. [Exh. 122, p.12] (The SWP-Disruption Program documents were ordered "classified" in 1975. [Exh. 43,44, 105].)

But it is hard to draw the line between the "Disruption Program" activity as such, and routine FBI operations. The "surreptitious entries" were not part of the formal program to disrupt; but materials stolen from SWP offices wound up in the

possession of both the FBI and the Civil Service Commission. [Exh. 129, Finding of Fact ??. In the course of discovery in this case the FBI itself conceded that at least two documents in ***40** its Cleveland files (but not part of the SWP-Disruption Program File) "arguably constituted evidence of harassment of the SWP." (FBI Memorandum, February 12, 1980) A more objective reader of the files would conclude that countless other episodes constituted harassment. They are summarized below.

Private hostility to the SWP is also common. Sometimes it leads to economic injury or physical violence. Episodes of that nature, in which the harmful results of the hostility are a matter of record, are also set out below under the "Proven Examples" heading. In addition, there is proof in the record of an underlying attitude or pattern of widespread hostility among members of the public. Some evidence of this is found in the testimony of SWP witnesses who described gratuitous threats and profanity from a police officer on account of SWP ***41** membership [JA 22-23], a threatened phone tap and the burning of SWP campaign literature [JA 77-79]. Better evidence of the public's attitude is found in the network of private contacts the FBI was able to recruit to monitor SWP activity. Such contacts were developed at no less than twenty-one colleges and universities in the area of the Cleveland FBI office, who reported on YSA activity (or inactivity) on their campuses. [Exh. 94] There were also contacts, in Cleveland, at the Cleveland Transit System [Exh. 451] Greyhound Bus Lines [Exh. 721] and Trans World Airlines. [Exh. 47 and 48] In addition, there were regular contacts as four Cleveland banks. [Exh. 2, 4, 10, 11, 12, 15, 17, 18, 22, 24, 25, 26, 28, 33, 35, 55, 61, 62, 74, 76, 77, 112, and 113].

Public cooperation in its wore was important to the 581 because of its ***42** particular interests in SWP finances, and the identification of SWP members and supporters. In Cleveland seven sets of files on SWP finances were maintained, including one entitled "Socialist Worker Campaign (Funds)" [Exh. 108] and another entitled "Ohio Socialist Campaign Committee (Funds)". [Id.] Those two files demonstrate FBI interest in precisely the information which plaintiffs are trying to keep confidential in this case. The FBI's Manual of Instructions directed all field offices to uncover the sources of SWP funds and the nature of their expenditures. [JS A-14] A 1973 general order to field offices demanded detailed accounts of SWP funds: "merely reporting monthly branch balances ... was wholly unsatisfactory and ... not ... accepted in future field reports." [Exh. 31 and 79] The Cleveland field office utilized ***43** its informants at local banks to routinely record all activity in the SWP checking account, including the names of payees on SWP checks. A large financial contribution would be brought to the attention of FBI headquarters. [Exh. 40]

As for members, the FBI director explained to the field offices why it was "imperative" to identify all of them: "It is conceivable that some of these present or former members of YSA and SWP may eventually apply for positions in government or key private industries." [Exh. 31 and 79]

C. There Are Innumerable Proven Examples of Threats, Reprisals and Harassment Directed At the SWP and Its Supporters

Plaintiffs proved that twenty-two SWP members were fired in the 12 month period before trial on account of their SWP membership. The State apparently does not contest the fact that twenty of these ***44** firings (all of those outside of Ohio and two in Ohio) were on account of SWP membership. Its only suggestion to the contrary is reference to the fact that one fired SWP member from Georgia testified that she had exaggerated her work experience on her job application. She was one of 15 SWP members fired at the same time from the same Lockheed plant, and the political motivation is obvious. [JA 42]

Other concededly political firings occured in 1980, within four months of the trial of this case when the federal government caused three SWP members in Brooklyn, New York to lose their jobs on account of their "political activities." [JA 6-16] The three worked at the Brooklyn Navy Yard, as civilians, for a civilian employer. Their political activities consisted of holding political discussions "before work" and "during ***45** breaks" with co-workers, and trying to interest co-workers in SWP literature. The responsible Navy officer regarded the literature as "potentially treasonous." The workers were reinstated after the intervention of private counsel for the civilian employer.

The State does deny, however, that two of the four Ohio firings that occurred in the year before trial were political. With respect to two SWP members fired at Alcoa, near Cleveland, Appellant's Brief states at page 9 "plaintiffs did not introduce any evidence which would establish ... [the two SWP members were] dismissed because of ... party membership." That is not correct. The evidence, while circumstantial, compels the conclusion that they were fired because they belonged to the SWP. [JA 26-33, R. 25-43] The members, Louise Haberbush and ***46** Kathy Fitzgerald were fired on the last day of a 30 day probation period during which the company could dismiss them without cause, under the union labor agreement. They were

given no explanation for the dismissals. Their foremen evaluated their job performances as virtually flawless. An Alcoa labor relations specialist testified that their personnel files did not reveal any work-related reason for their discharge. [JA 30-31] Neither worker had talked or acted politically with co-workers while at Alcoa. They worked separate shifts, in separate buildings, and took meals and breaks separately. Yet the discharges were related to each other: a single set of notes made by a supervisor regarding the terminations referred to both women. [Exh. 130, p.13] Most significantly the notes revealed that the decision to dismiss these two individuals, who were ***47** employed in blue-collar "forging chipper" positions, required consultations with the following Alcoa executives: General Manager, Forging Division; Manager, Corporate Staff, Industrial Relations Department; a Security Department Member; a Production Supervisor; a Shift Supervisor; and a Public Relations Assistant. In addition, the Chief of Police of Newburg Heights, Ohio where the plant is located, was also involved in the process leading to the firings. Four of these Alcoa executives including the Manager, Corporate Staff, and the Security Department member work at Alcoa's Corporate Headquarters in Pittsburg, and were consulted on the phone by the Labor Relations supervisor in Cleveland. [JA 31-33]

The only plausible explanation for all of this is that Alcoa somehow found out that Haberbush and Fitzgerald were ***48** SWP members, and fired them for that reason.

The State concedes that the two other Ohio SWP members were fired for political reasons within one year of trial. One of them is a named plaintiff in this case, a former SWP candidate for Congress. He and another SWP member lost their jobs at the same plant after they were attacked, physically and verbally, by a fellow worker named Bryant who was the union shop steward. Bryant told Mitts (the plaintiff) that he knew he "was a communist and that if [he] started spreading communist crap in the plant, they would find [him] dead in the parking lot." [JA 46] Repeated threats followed. Mitts' locker was ransacked, and his clothing slashed. [JA 47] He was hit with "grinder slurry" thrown at him by Bryant. Grinder slurry is a "combination of coolant and grinding ***49** wheel and metal that ... packs real tightly." [Id.] He was constantly told that the steward would "take care" of him and "kill" him. [JA 48] Abdo, the other SWP member who worked with Mitts, was also threatened before being fired. [JA 53] The two SWP members reported the political harassment to management. Management's reaction was to fire them both and retain their antagonist.

Bryant's threat to kill may sound like hyperbole. But other recent incidents show that threats against the SWP and its members must be taken at face value. In 1980, the Cleveland SWP office received a phone call threatening that if a scheduled campaign rally were held, "people would be there with guns and people would be killed." [R. 57] The caller identified himself as a member of the American Nazi party. On the day of the rally, people dressed in Nazi ***50** regalia, wearing the swastika armband, appeared several times outside the meeting place. [JA 33-38]. The SWP had notified the police who provided protection and the event took place peacefully. However, in Pittsburgh, in January 1981, when no police were present, the SWP office was fired on and hit with two bullets in the evening after a publicized speaking event. [JA 43] Earlier in 1980, the letters "KKK" had been scrawled on the Pittsburgh office windows and elsewhere in the vicinity of the SWP office. [JA 80-81]. And a car belonging to the SWP's Pennsylvania senatorial candidate was set on fire while she was at work in 1980. [Id.].

Other threatening phone calls were received at the SWP's office in Cleveland in the fall of 1980. [JA 62-65].

In Chicago, in 1978, the SWP offices were entered and set on fire during the ***51** night. [JA 3-4] Pictures of the Chicago wreckage are attached as exhibits to the Miah depostion in the record. A hate letter received at the SWP's Cincinnati office in 1980 was postmarked Chicago. [Exh. 120]. Other violent attacks on SWP offices, and SWP members, have also occurred in the past. The Los Angeles SWP office was bombed in 1975. In 1970, the same office was entered by armed men who ordered the occupants to lie down and then spread gasoline and set the place afire. In Los Angeles, a member's apartment, the intended site for an SWP party, was bombed in 1969. The Los Angeles office was bombed twice in 1968. [Exh. 129, Findings of fact 201, 201, 202 and 204]. In San Diego bullets were shot through the SWP office windows in 1970. [Exh. 129, Finding of fact 205].

Identification as a SWP member or supporter is dangerous in other ways as ***52** well. In 1976, the trial witness Sherri Katz was denied federal employment on account of her SWP political activities. In high school and for a while in college she had belonged to the YSA and to the Student Mobilization Committee (SMC) against the war in Vietnam. The FBI regarded the SMC as an SWP front. [Exh. 118] The FBI had accumulated a 17-page file on Ms. Katz by the time she was 17 years old; it grew as she got older. [Exh. 115,116,117,118 and 133]. In law school Ms. Katz applied for a job as a summer legal clerk in

the U.S. Attorney's Office for the Southern District of Ohio. The job was offered to her in writing and then withdrawn without explanation after she submitted the federal form for a security check. [JA 65-75]

There are other specific examples in the record of federal harassment of SWP ***53** members, and of others who were not members but were suspected of having some connection with the organization. Thus, a briefcase belonging to the SWP's presidential candidate was stolen from his car and later discovered in the possession of the FBI. [Exh. 129, Finding of Fact 169] Friends and neighbors of SWP members were intimidated. [Exh. 129, Finding of Fact 95.] Landlords were warned about the dangers of the SWP. [Exh. 129, Findings of Fact 126, 172 and 173].

In 1973 two FBI agents visited an individual who was not a member of the SWP but who had displayed a poster for the SWP presidential candidate and signed a leaflet urging people to vote either for the SWP candidate or another person. The agents confronted the individual with proof that he had contributed $10.00 to the 1972 Socialist Workers campaign ***54** fund. The agents told the individual that they knew where he was employed and they warned him to disassociate himself from the SWP and said that they would keep an eye on him in the future. [Exh. 120, Finding of Fact 15]. The Government Accounting Office, where federal election law disclosure reports used to be filed, harassed at least one contributor to an SWP election campaign. [Exh. 129, Finding of Fact 195.]

The record is filled with evidence of government harassment of people connected with the SWP and of government attempts to interfere with SWP campaign activities. [Exh. 129, Findings of Fact 129, 167, 170, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 222 and 223] This sampling of episodes is the tip of an iceberg whose real dimensions can be measured by reference to the FBI's systematic treatment of everybody ***55** connected with the SWP or YSA. All members were listed on the FBI's "Security Index." [Exh 21,69]. People on the Security Index were scheduled to be arrested and held without charge in case of a "national emergency" [Final Report of the Select Committee to Study Governmental Relations With Respect to Intelligence Activities, U.S. Senate, 94th Cong., 2d Sess., Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans, Book III, "The Development of FBI Domestic Intelligence Investigations," pages 420-21].

As noted above, the FBI's other long-range objective in identifying members was to prevent their employment or get them fired. But the immediate consequence of inclusion in the Security Index was an "investigation." Investigation meant that an FBI agent, ***56** identifying himself as such, would visit and question the subject's employers, teachers and sources of credit. [Exh. 65 and 98].

Not only "members" were "investigated". [The FBI files on the SWP and YSA from the Cleveland field office which were released to the plaintiffs were heavily excised. When the FBI deleted the name of a person who has been the subject of an investigation the symbol "D" was placed alongside the deletion. See FBI Reply to Plaintiff's Renewal of Motion For Production of Documents Under Rule 45(d)(1), F.R. Civ. P., November 19, 1980, pages 2 and 3, ". . . the names of persons who were the subjects of investigation by the FBI (marked "D") were deleted . . . "* * *" * * * persons protected by Code "D" who were the subjects of FBI investigations".] The consequence of ***57** expressing support for the SWP election ticket was investigation. [Exh. 36] Having a subscription to the SWP's newspaper, The Militant, meant that the subscriber was "indexed", and therefore investigated. [Exh. 86] Forty to fifty people who merely expressed some interest in the YSA on a college campus were investigated. [Exh. 27]. When the Cleveland Police department photographed marchers in a peaceful SWP political demonstration, and turned over the photos to the FBI, investigations followed. [Exh. 41] Scores of people, SWP members or not, who attended an SWP conference at Oberlin in 1973 were investigated. [Exh. 51] Investigations were conducted in connection with the FBI response to a request for information about the YSA from the Lieutenant Governor of Ohio. [Exh. 64] The FBI investigated someone denounced as connected to the SWP in a ***58** phone call from a self-described right winger opposed to Blacks and Jews. [Exh. 67] When the YSA held its national convention in Houston in 1971 and 1972, the FBI contacted three hotels and received copies of the guests' registration cards. Nine people from Cleveland indicated affiliation with the YSA on the cards. Five others did not. The FBI investigated all fourteen of the Clevelanders because they were "believed to be connected with the YSA due to the fact that they were from out of town and registered for the period of time during which the convention was held". [Exh. 81].

At least a dozen people who joined an SWP picket line against Spiro Agnew were also investigated. [Exh. 82]

A high school girl who wrote a letter that was misdirected to the SWP's New York office was investigated. Paton v. LaPrade. 524 F.2d 862 (3rd Cir. 1975).

***59** The payees of SWP checks were routinely investigated. [Exh. 10,76]

The inescable conclusion is that a person would be investigated on account of any connection with the SWP or YSA, whether that connection was direct or extremely attenuated and the investigation would entail FBI visits to employers and others.

Subjection to overt private harassment, to the dangers of physical violence and to both overt and covert public reprisal and harassment are facts of life for people who support the SWP.

D. Disclosure Would Deter Contributions to SWP Campaigns.

There is direct evidence that people have been deterred from contributing to SWP Political campaigns because of fear of disclosure and the harmful consequences of disclosure. (Exh. 129, Findings of Fact 305, 306, 307, 308, 310, ***60** 311, 313, 315, 318, 319, 321, 322, 324, 327 and 328.) Other people have contributed less than they would have in order to escape application to them of the (then) $100 and above federal disclosure provision. (Id., Findings of Fact 309 and 312.)

There is also opinion evidence, based on longtime SWP membership, that disclosure of contributors names would lead to threats, reprisals and harassment. [JA 11-12; Miah Deposition, p.18-19]

III.

THE DISTRICT COURT REACHED THE CORRECT RESULT IN APPLYING THE LAW TO THE PROVEN FACTS IN THIS CASE.

A. Other Federal Courts And State Administrative Agencies Have Also Granted Exemption From Disclosure To The SWP

***61** The three-judge court's reading of the evidence summarized above was correct. And it is in accord with decisions reached by courts and administrative agencies in Illinois, Minnesota, Wisconsin, California, and Washington which have also granted exemptions from similar disclosure laws to the Socialist Workers Party. 1980 Illinois Socialist Workers Campaign v. State of Illinois Board of Elections (D.C. N.D. Ill. No. 81 C 1919, November 30, 1981); Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F. Supp. 540 (1977) (three-judge court); In Re Manual (No. AE 77,005 California Fair Political Practices Commission, March 1977); In the Matter of the Application of the 1977 Seattle Socialist Workers Campaign for a Reporting Modification, P.D.C. No. 696 (Public Disclosure Commission, February 21, 1978); ***62** Socialist Workers 1974 Washington State Campaign v. Washington Public Disclosure Commission (Wash. Sup. Ct. Nos. 52,505, 54,772, 1977); In the Matter of Minnesota Socialist Workers 1974 Campaign Committee Request for Exemption (Minn, State Ethics Comm., No. H-0001 October 1974). See SWP 1974 National Campaign Committee v. Federal Election Commission (D.D.C. No. 74-1338 January 3, 1979). (consent decree). See also Doe v. Martin 404 F.Supp. 753 (D.D.C. 1975).

There is one case to the contrary, Oregon Socialist Workers 74 Campaign Committee v. Paulus, 432 F. Supp. 1255 (1977) (three-judge court). The Oregon case is wrong on the facts, and on the law. It is wrong on the facts because the two judge majority somehow did not find as a fact that the SWP had ever been the subject of FBI or other federal surveillance or harassment. ***63** (432 F. Supp., at 1259, footnote 1). This startling judicial myopia might itself account for the aberational decision reached in the Oregon case. But the two judge majority also betrayed misunderstanding of the fundamental First Amendment principles involved. Appellants rely heavily on the reasoning of that case, quoting it extensively in their Brief at pages 22-24, but a short passage is worth repeating here as well:

> "We feel that persons supporting specific parties and candidates should be willing to 'stand up and be counted'."

The slogan that "people should stand up and be counted" is at odds with every single decision of this Court upholding the right of associational privacy, and totally inconsistent with the measured approach of Buckley v. Valeo to the application of election disclosure laws to unpopular minor parties. The dissent ***64** in the Oregon case did recognize what was at stake:

"We must preserve the rights of splinter parties to participate in the political process. '. . . [W]e should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death . . .' Abrams v. United States, 250 U.S. 616, 630, 40 S.Ct. 17, 22, 63 L.Ed. 1172 (1919) (Holmes, J., dissent). The alternative will force minor parties underground and create a significantly greater risk to our democratic society."

B. The Evidence Establishes That Public Identification With The SWP Is Dangerous.

The District Court here, in deciding that the events and attitudes proven are "'a chilling reminder to those who might support this unpopular cause in the future"', and that there is a "reasonable probability" that disclosure would subject contributors to "threats, reprisals and harassment", rejected ***65** certain misleading analyses of the evidence urged by the State and which the State presses again here. The first such contention is the argument that there is a missing link in the evidence because the evidence of proved harassment is not connected to the victims' "compliance with Campaign Finance Reporting requirements." [App. Br. 13] This theme underlies the emphasis in the State's Brief given to the fact that SWP office phone numbers are listed in the phone book, that SWP campaign rallies are given publicity, that an SWP candidate's picture has been in the newspaper, or that a person was a "very active" YSA member. It is for those reasons, the State says, that SWP offices were stalked by Nazis, or people lost jobs: The victims of harassment were victimized, not because their antagonists learned their identities through the disclosure ***66** laws, but because they found it out some other way. Ergo, the state concludes, there is a gap in the evidence and the case for the likelihood of harassment is not made out.

The State's argument on this point is wrong for three reasons. First, it misreads, or fails to read, Buckley v. Valeo on the reason why circumstantial evidence instead of a blanket exemption is appropriate in a case like this:
"A minor party, particularly a new party, may never be able to prove a substantial threat of harassment, however real that threat may be, because it would be required to come forward with witnesses who are too fearful to contribute but not too fearful to testify about their fears. A strict requirement that chill and harassment be directly attributable to the specific disclosure from which the exemption is sought would make the task even more difficult." 424 U.S. at 73, 74.

***67** Secondly, as the District Court noted, no names and addresses have yet been disclosed by the SWP in Ohio; hence the practical necessity for circumstantial evidence in a case like this one.

The third and fundamental reason the argument not only misses the point but in fact supports the plaintiffs' case, is that it highlights the realities of identification with the SWP. The State's insistence that such identification is sometimes made by means other than a disclosure law reinforces the District Court's conclusion that compelled disclosure is dangerous and impinges on protected First Amendment associational rights. For the point of the plaintiffs' case is to allow people who have not willingly "gone public", to contribute to SWP campaigns with confidence that they will not be added to the list of those unwillingly harassed or injured.

***68** C. The Evidence Establishes The Reasonable Probability Of Harrassment, Prospectively, And In Ohio.

There are two other themes in the State's attack on the sufficiency of the evidence: the claim that some or much of the evidence is "stale", and the claim that evidence about what happens outside Ohio is irrelevant.

Both arguments are given a seeming plausibility by their association with accurate observations. Thus plaintiffs agree that on the issue of harassment, what is important is the prospective likelihood of harassment. But it does not follow, as the State would have it follow, that evidence of past harassment is irrelevant on either that issue, or obviously, on the question of the challenged statute's chilling effect on the exercise of associational freedom by SWP supporters. Even more to the point ***69** however is the fact that there is an abundance of extremely recent evidence which the State artfully tries to belittle by setting up the comparison with the past.

Similarly, the State insists that the issue is the likelihood, in Ohio, of threats, reprisals and harassment. Plaintiffs agree. But it does not follow that evidence of what happens outside of Ohio is irrelevant on the issues of public and private hostility, likelihood of injury and "chilling" effect within Ohio.

The very same two points were raised by some (but not even all) the state defendants in the 1981 case in which the Federal District Court in Illinois enjoined application to the SWP of the Illinois disclosure law. 1980 Illinois Socialist Workers Campaign v. State of Illinois Board of Elections (No. 81 C ***70** 1919 N.D. Ill. Nov. 30, 1981.) "His [the Illinois Attorney General's] position is based on the argument that evidence of acts against the SWP outside Illinois are irrelevant and that no 'present' evidence of threats or harassment are included in the record." The Illinois District Court's reaction:

> "We find this position incredible, and wholly without support either in law or or these facts."

1) The evidence is contemporary, not "historic" or "stale".

What makes the State's position "incredible" and "wholly without support"? We treat the so-called "stale" evidence objection first. The premise for its position on this point is the State's characterization of the documentary evidence: "Much of the material relates to a period of time ten ***71** to twenty years in the past." [App. Br. 7] But the fact is that plaintiffs conclusively demonstrated continuous FBI interference in the SWP's political activities up until at least 1976 two years after this case was filed. [JA 99]

What is the significance of 1976 itself as a cut-off date? The record in this case shows the FBI's routine hostility toward the SWP until at least 1978. [JA 94-95] Announcement of the termination of the FBI investigation occurred only after the firestorm of public criticism of the FBI during the Watergate years, and after three years of pre-trial discovery in Socialist Workers Party v. Attorney General (D.C.S.D.N.Y. 73 Civ. 3160 (TPG)) which had resulted in sensational revelations of FBI wrongdoing against the SWP, including the July 1976 arrest of FBI informer Timothy Redfearn who had burglarized the SWP's Denver ***72** offices. [Id. 458 F. Supp. 895, 903-06 (S.D. N.Y. 1978), vacated on other grounds 596 F.2d 58 (2d Cir. 1979), cert. denied. 444 U.S. 903 (1979) Voluntary cessation of FBI activities against the SWP, pendente lite, provides no assurance that such activities wil not recur after a decision in the New York case, the trial of which was completed in June 1981.

Indeed past harassment is circumstantial evidence of continuing harassment. Plaintiffs have proven recent instances of loss of jobs in Ohio and Georgia on account of SWP membership. There are two plausible explanations: 1) private hostility, in corporate America, toward an organization whose purpose is "the abolition of capitalism"; and 2) government hostility toward an organization dedicated to replacing government as we know it with ***73** "a worker's government to achieve socialism."

These explanations are not mutally exclusive. The likelihood of the first does not diminish the probability of the second. It must be remembered that it was the government's long range objective to identify SWP members "because they might eventually apply for positions in government or key private industries." How in fact did Alcoa know that Haberbush and Fitzgerald were SWP members? They neither talked nor acted politically at Alcoa. Information to link them together at all, and to identify them as SWP members had to come from somewhere outside that plant. The federal government has for years made it its business to watch the SWP and its members. Past federal-corporate partnership in anti-SWP activity is amply reflected in this record and supports the ***74** inference of a federal role in these 1980-81 firings.

Furthermore, in assessing the significance of the so-called "stale" documentary evidence, it is helpful to compare the situation of the SWP today with that of a hypothetical minor party which had never been on the Attorney General's List, had never been considered "the largest and probably the best organized revolutionary organization in the U.S." and which had never been targeted under the government's notorious COINTELPRO operation. The comparison is even more realistic if the hypothetical party had not in the past (and at present) stood for abolishing capitalism. Would potential contributors to such a hypothetical party be more chilled, or less chilled, than SWP contributors, in the light of actual record evidence in this case? The answer ***75** is obvious; the relevance of the "past harassment" evidence is self-evident. "[R]ecent public disclosure of past government harassment presents a chilling reminder to those who might support this unpopular cause in the future." Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F. Supp. at 548.

In this connection, the State relies on Laird v. Tatum, 408 U.S. 1 (1972) in asserting that "'Allegations of a subjective "chill" are not an adequate substitute for a claim of specific present objective harm or threat of specific future harm. . .'" [App. Br. 19] The State's reliance upon Laird v. Tatum is misplaced. Proof of "subjective chill" is only a minor part of plaintiff's case in light of the abundance of concrete evidence establishing what O'Shea v. Littleton, 414 U.S. 488 (1974) referred to as the

***76** "continuing, present adverse effects" of past harassment. 414 U.S. at 495-96.

Legal recognition that the past is prologue is found in the law's treatment of business "good will" as a capital asset which doesn't disappear overnight. In this case the "stale" evidence documents the FBI's enormous investment in creating "bad will" and widespead hostility among the public toward the SWP. It would be unrealistic to speculate, as the State urges the Court to speculate, that the bad will toward the SWP generated by decades of overt and covert government harassment has now disappeared.

But the ultimate answer of course to the "stale" evidence point is the 1980 and 1981 evidence of twenty-two people fired, plus the gun shots, assaults and batteries, car and literature burnings, etc., and phone calls threatening more of the same.

***77** 2) The evidence proves extensive harassment in Ohio and nationally.

The State's other main contention, that proof of harassment of SWP members outside Ohio is not relevant, is also without merit. There is no reason to believe that Ohio's borders are an impenetrable wall, isolating it from the political life of the rest of the nation. Today's society is highly mobile. Federal and state police agencies coordinate their operations throughout the country. The public in Ohio obtains the same information from the national media through television, wire services and magazines, as it does in other states.

The State suggests no particular reason to support its bald proposition that the non-Ohio evidence doesn't count. The proposition on the face of it is "incredible" as the Illinois court ***78** said. The State's argument is also inconsistent with the practice of courts all over the country in analogous situations in which public attitudes, and the likelihood of the public's future behavior is relevant. Thus in trademark infringement cases, an injunction of nation-wide scope is normally and regularly issued on the basis of evidence of public confusion in just one or a few jurisdictions. American Association For The Advancement of Science v. The Hearst Corp., 498 F. Supp. 244 (D. D.C. 1980); Union Carbide Corp. v. Ever-Ready Inc., 531 F.2d, 366 (7th Cir. 1976); Roto-Rooter Corp. v. O'Neil, 513 F.2d 44 (5th Cir. 1975); World Carpets Inc. v. Dick Litrells New World Carpets, 438 F.2d 482 (5th Cir. 1971). The premise for such decisions is that there is no reason to think that if Americans are fooled by a deceptive trademark in one place, they ***79** wont be fooled elsewhere as well. Similarly, injunctions have been issued prohibiting rock concerts on the basis of evidence about public behavior at rock concerts in other states. Planning and Zoning Commission v. Zemel Bros. Inc., 270 A.2d 562 (1970 Conn.); County of Sullivan v. Fillippo, 315 NYS 2d 519 (N.Y. Sup. Ct. 1970); Drew v. Town-Moc, Inc., 304 NYS 2d 1003 (N.Y. Sup. Ct. 1969). In calculating the likelihood of the public's behavior within their jurisdictions in the future, courts have never made believe that the world came to an end at the state line. Adoption of the State's position would set a peculiar precedent.

However, even if the out-of-state evidence of firings, violence and other injury connected to support for the SWP were not considered, or sharply discounted, the recent in-state Ohio ***80** evidence itself sustains the District Court's finding that "in Ohio, public disclosure that a person is a member or has made a contribution to the SWP would create a reasonable probability that he our she would be subjected to threats, harassment or reprisals." (Emphasis added) [JS A-27]

Plaintiffs proved that approximately 7% (4/60) of the SWP members had been fired in one year alone, in Ohio, on account of SWP membership. If translated into major party proportions, that would mean thousands of Democratics and Republicans in Ohio would lose their jobs, annually, on account of political hostility. There is also the evidence of physical violence. Assaults preceeded the firings in Cincinnati. And the intervention of the police (at the SWP's request) may have prevented in Cleveland the armed attack and shooting that ***81** occurred shortly thereafter in Pittsburgh (which, incidentally is actually closer to Cleveland than are Cincinnati, Columbus and Dayton, Ohio). Recent threats made in Ohio, face to face, and on the telephone also demonstrate public hostility, and the likelihood of injury through disclosure.

Even if Ohio were an island instead of a midwestern state, the purely Ohio evidence establishes the reasonable probability, in Ohio and prospectively, of threats, reprisals and harassment if disclosure is compelled.

D) Every type of appropriate evidence was introduced.

The State's final theory is that the decision below is wrong because "no evidence was introduced before the District Court showing harassment of individuals resulting from their signature of nominating petitions of ***82** Socialist Worker Party

candidates in Ohio during recent years." [App. Br. 22]

The first thing to keep in mind about this "nominating petition" argument is that in Ohio the official nominating petition does not state a party name. [App. Br. A-3] The words "Socialist Workers Party" do not appear anywhere on the form. Members of the public who sign in order to help an individual SWP candidate get on the ballot do not directly and publicly identify themselves with the SWP as such. And the realities of signature gathering, in casual encounters on street courners, at bus stops and in shopping centers suggests caution in reading into the act of signing a very high level of commitment to the SWP or its goals. Actually putting up some money is very different.

***83** What is the significance of the absence of evidence that the people who do sign are harassed? The absence of evidence, of course, does not mean that they are not harassed. But because their contact with the SWP is so fleeting and random, it is questionable whether the SWP would ever learn about the harassment, even if the signer did discover why he or she had been victimized. The standard of proof which the State's argument on this point would impose would require a minor party to come up with precisely the evidence that it is least likely ever to be able to obtain. And the imposition of that standard would force minor parties which wanted to qualify for an exemption from disclosure to check up periodically on all the people good enough to have signed a petition, asking: "Have bad things happened to you recently, as a result of ***84** signing our petition?" To force minor parties themselves to go about spreading "chill" and apprehension among the public about the dangers of associating with them would make a mockery of Buckley v. Valeo's "flexibility" in proof rule. Furthermore, lack of resources to conduct a massive interview campaign would frustrate not only the SWP but probably every other minor party which had to bring in such proof as a condition to the exercise of its right not to disclose its contributors' names.

The evidence plaintiffs did present was the kind the Court in Buckley said was appropriate for establishing exemption from a disclosure law. The absence of "nominating petition" evidence is a false issue.

The uncontroverted evidence is so abundant that if the Socialist Workers Party, on this trial record, and with its ***85** history, does not meet the constitutional standard for exemption from the Ohio disclosure law, then no party ever will.

IV

THE OHIO CAMPAIGN EXPENSE REPORTING LAW IS UNCONSTITUTIONAL ON ITS FACE BECAUSE IT HAS NO RATIONAL MONETARY THRESHOLD FOR DISCLOSURE AND THUS COMPELS REPORTING OF CONTRIBUTIONS AND EXPENDITURES WHOSE DISCLOSURE IS NOT SUPPORTED BY ANY STATE INTEREST.

This case presents the question left unanswered in Buckley v. Valeo: "[W]hether information concerning gifts [of less than $100] can be made available to the public without trespassing impermissibly on First Amendment rights." Buckley at 84.

Plaintiffs presented the claim of facial unconstitutionality in their complaint (¶ 55). The District Court denied plaintiff's motion for summary ***86** judgment on this claim in its order of April 1, 1976, and did not discuss it further in its Opinion of June 25, 1981. The claim affords an alternative basis for affirming the judgment of the District Court. United States v. American Railway Express Co., 265 U.S. 425, 435 (1924).

The Federal Campaign Expense Law at issue in Buckley required the keeping of records of contributions between $10 and $100, but public disclosure only of gifts larger than $100 (the federal law has been amended and today only requires public disclosure of gifts over $200.)

The state election law challenged in this case differs from the federal law in two significant ways. The Ohio law has no threshold for disclosure. Even $5, $10, or $15 contributions must be reported and made public. There are no real exceptions. The twenty-five dollar ***87** "fund raiser" exception itself requires a public appearance as an alternative to official public reporting.

The other pertinent difference between Ohio law and federal election law is that in Ohio there are no statutory limits on the amount that an individual can contribute to an election campaign. Therefore there can be no "violations" of contribution

limitations, and hence no government interest in detecting "violations." However, detection of violations was one of the three government interests identified in Buckley as justifying the federal law's infringment on First Amendment associational rights. In Ohio, then, only two of the government interests exist, and the justification for First Amendment infringement is pro tanto reduced.

***88** Thus the Ohio law in requiring disclosure of even petty contributions invades First Amendment rights more severely than federal law, and does so with much less justification, in terms of state interests served, than the federal law.

The constitutional test was stated in Gibson v. Florida Legislation Investigation Committee, 372 U.S. 539 (1962):
"[I]t is an essential prerequisite to the validity of [state action] which intrudes into the area of the constitutionally protected rights of speech, press, association and petition that the state convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest." 372 U.S. at 546.

Put another way:
"[E]ven though the governmental purpose be legitimate and substantial, ***89** that purpose can not be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose." Shelton v. Tucker, 364 U.S. 479, at 488.

"Precision of regulation must be the touchstone in an area so closely touching on our most precious freedoms." NAACP v. Button, 371 U.S. 415 (1963).

The State concedes that regulations which cause significant interferences with associational privacy must be "closely drawn." [App. Br. 14]

The question is, what is Ohio's "compelling" interest in compelled disclosure of the fact that an individual has contributed $5, $10, or $15 to an election campaign? The record below contains nothing that supports the existence of such an interest. How could ***90** it? Would even the humblest candidate be corrupted by such a contribution? Does the public care who makes a nominal contribution to a campaign? The state interest would seem to be just the opposite: To avoid cluttering the official records with so much chaff that the really interesting donations are lost in the mass of trivia which the Ohio law accumulates.

While the state's requirement that all contributions be disclosed to the public has no "relevant correlation" or "substantial relation" to real governmental interests, Buckley at 64, the harm done to small contributors is real.
"It is undoubtedly true that public disclosure of contributions to candidates and political parties will deter some individuals who otherwise might contribute. In some instances, disclosure might even expose contributors to ***91** harassment or retaliation. These are not insignificant burdens on individual rights. . . ." Buckley at 68.

Pollard v. Roberts, 283 F. Supp. 248 (E.D. Ark.) (three-judge court), affd, 393 U.S. 14 (1968)) reasoned that it would be "naive" not to recognize that disclosure would subject some contributors to "reprisals of varying degrees of severity." Pollard at 258. In Pollard the Republicans were the potential victims.

In Ohio the people hurt are ordinary citizens whose nominal contributions are more a form of symbolic speech than financial support, and who may not contribute at all if they can foresee being hurt as a result. Disclosure undoubtedly deters contributions. Pollard at 258; Buckley at 68.

The Ohio law is clearly unconstitutional. While Buckley did not ***92** reach the question of the validity of disclosure of contributions under one hundred dollars, its discussion of the constitutionality of the then one hundred dollar federal threshhold shows that it was assumed that some threshhold was required to meet minimum rationality standards. "We can not say on this bare record that the limits designated are wholly without rationality." Buckley, at 83. "Congress is not required to set a threshhold that is tailored only to the" goals of corruption prevention, and enforcement of contributions limitations. Id. Some "reasonable mark" had to be set, and one hundred dollars was "within the 'reasonable latitude' given to the

legislature." Buckley at 83, 84.

The absence of any threshhold for disclosure has no rational basis. The Ohio law is a classic example of state ***93** legislation, in the First Amendment area, which ignores "less drastic means" available for achieving the same goals, and substitutes the dragnet approach for "precision of regulation." Shelton v. Tucker, 364 U.S. at 488; NAACP v. Button, 371 U.S. at 438.

California Bankers Association v. Schultz, 416 U.S. 21 (1974) is a good example of the Court's insistence that laws which strike at privacy must be narrowly drawn. In upholding certain financial reporting rules the Court said:
"The reports of foreign financial transactions required by the regulations must contain information as to a relatively limited group of financial transactions in foreign commerce, and are reasonably related to the statutory purpose of assisting in the enforcement of the laws of the United States. * * * The regulations are sufficiently tailored so as to single out transactions found to have the ***94** greatest potential for such circumvention [of the criminal law] and which involve substantial amounts of money. They are therefore reasonable in the light of that statutory purpose, and consistent with the Fourth Amendment." 416 U.S. at 62-63.

The regulations upheld in California Bankers required individuals to report foreign transactions involving monetary instruments worth $5000 or more. Associational privacy rights were not even asserted by most plaintiffs. Nevertheless the Court required great precision and care in narrowly focusing the statute and regulations. The contrast with the Ohio statutes' blunt, cavalier demand for the names and addresses of all contributors of campaign funds, in any amount, is clear.

Ohio itself has demonstrated the capacity to enact reasonable regulations in a closely analogous area. The State's ***95** recent requirement of an ethical disclosure statement from candidates for Congress and state, county and city offices contains a realistic assessment of amounts which could subject candidates to influence. [Exh A-1, § 102.02]. The statements must list income and gift sources over five hundred dollars, together with investments and debts over one thousand dollars. There is no reason that Ohio's Campaign Expense Reporting Law could not apply the same or similarly "rational" disclosure requirements to small contributors that § 102.02 affords to people such as clients much more closely associated with candidates for office.

The vast majority of other states have legislated rationally in this area. Only five other states -- Maryland, Minnesota, New Mexico, Utah and West Virginia -- have not established minimums ***96** for contributions which must be reported. Thirty-five states and the District of Columbia have minimums ranging from twenty to two hundred dollars. Some use figures which are still higher -- two hundred fifty dollars in Arkansas; five hundred dollars in Nevada; and one thousand dollars in Louisiana. See Appendix herein. The national consensus is that nominal contributions do not pose any significant potential for actual or apparent corruption and that reporting nominal contributions, in their vast quantities, does not serve the "informed electorate" goal of disclosure laws.

Ohio also mandates that all expenditures be reported. It is hard to see how recording the purchase of a soft drink, or the reimbursement of carfare would relate to the intersts which Ohio asserts. In many instances, the ***97** reporting of small expenditures would reveal the identities of rank and file supporters who are repaid their expenses. Expenditure reporting thus implicates the same privacy interests discussed above. The absence of a threshhold for reporting expenditures is more common: there are no threshholds in seventeen states. See Appendix. But there is no reasonable basis for requiring that nominal expenditures be reported.

Campaign finance disclosure laws, on the whole serve valid public interests. But,
"Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repeal invasion of their liberty by evil minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding." ***98** Brandeis, dissenting in Olmstead v. U.S. 277 U.S. 438 (1928), at 479.

***99 CONCLUSION**

The decision of the District Court should be affirmed because the Ohio Campaign Expense Reporting Law is unconstitutional as applied to the plaintiffs or, in the alternative, because it is unconstitutional on its face.

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APPENDIX

DISTRICT OF COLUMBIA AND STATE THRESHOLDS FOR DISCLOSURE OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

THRESHOLDS

1/ State

2/ Contributions

3/ Expenditures

4/ Source

1/	2/	3/	4/
AL	$ 10	$ 5	§17-22-10
AK	100	100	§15.13.040
AZ	25	0	§16-907, 913
AR	250	25	§3-111
CA	100	100	Gov’t Code §8421
CO	25	25	§1-45-108
CT	30	0	§9-348h
DE	100	100	§8007
DC	50	10	Tit 15 §1-1416

FL	100	0	§106.07
GA	101	101	§40-3806
HA	100	0	§§11-199, 212, 213
ID	50	25	§67-6612
IL	150	150	Ch.46, §9-13
IN	100	100	§3-4-6-9
IA	100	5	§56.6
KS	25	25	§25-4108
KY	100	50	§121.180
LA	1000	200	§§18.1491.6, 7
ME	50	0	Tit.21, §1397

MD	0	0	Art.33, §§26-11, 12
MA	25	25	Ch.55, §18
MI	20	0	§169, 229
MN	0	0	§210A, 26
MS	200	250	§§23-3-41, 43
MO	50	50	§130.041
MT	25	0	§§13-37-229, 230
NV	500	0	§294A.010, .020
NJ	100	0	§19:44A-16, 18 Admin. Code §19.25-12.1
NM	0	0	§1-19-31
NY	99	50	Election Law §14-102

NC	100	25	§163-278, 8, 9, 11
ND	100	N/A	§§16.1-02, 08
OH	0	0	§§3517.10, .11
OK	200	0	§15-103, 106
OR	50	100	§260.083
PA	50	0	Tit.25 §3246
RI	200	25	§17-25-11
SC	100	N/A	§8-13-620
SD	100	0	§12-25-13
TN	100	100	§2-10-107
TX	50	50	Election Code §14.07

UT	0	0	§20-14-8
VT	25	0	Tit.17, §2052
VA	100	100	§24.1-258
WA	10	25	§42.17.090
WV	0	0	§3-8-5a
WI	20	20	§11.06

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EXHIBIT 36

CAMPAIGN WITH THE SOCIALIST WORKERS PARTY

Alyson Kennedy for U.S. president, Osborne Hart for vice president!

Don't organize around who you're against, fight for what you're for!

The capitalist economic crisis is battering workers and farmers in the United States and around the world. It's a slow-burning global depression, and it's working people who are paying the price. Alyson Kennedy and Osborne Hart, the Socialist Workers Party candidates for U.S. president and vice president, are discussing with workers on their doorsteps and on strike picket lines from small towns to big cities, from coast to coast, how we can organize to overturn the dictatorship of capital, which is at the root of the crisis.

Socialist Worker Party candidates Alyson Kennedy and Osborne Hart have long histories in class struggle. ***Left****: Kennedy joins Verizon strikers at April 25 rally in Trenton, New Jersey.* ***Right****: Hart (at left) at November 2015 rally for $15 and a union in Philadelphia.*

The bosses throw job safety out the window as they impose speedup or slash hours to boost their profits. They scapegoat immigrant workers, seeking to drive down wages and divide the working class. Millions have no jobs, or temporary, part-time work at minimum wage. Workers wages are stagnating.

The bosses try to convince us that they're rich because they're smart and we're stupid. And they run the government because they say they know what's best for us.

They have unleashed a propaganda war against the working class, churning out articles saying things like, "the white American underclass is in thrall to a vicious, selfish culture whose main products are misery and used heroin needles. Donald Trump's speeches make them feel good. So does OxyContin."

This is the biggest crisis of capitalism, and their twin parties, the Democrats and Republicans, in our lifetimes. The capitalist class and their media blast Trump and Bernie Sanders, but what they really fear is the hundreds of thousands of working people who have turned out to hear what they have to say, looking for an alternative to politics as usual, to the patronizing attitude of the capitalist class and their politicians who look at working people as "white trash," "welfare cheats" or "crack-heads." But more and more working people are refusing to keep quiet.

The Socialist Workers Party poses a working-class road out of the dog-eat-dog, crises-ridden capitalist system and its wars, racism and oppression of women.

As working people fight together to defend ourselves we gain class-consciousness and self-confidence and learn that we can rely on our own power, solidarity and mobilization. We become different people. Like Malcolm X said when asked if he was trying to wake Blacks to their oppression, he said "No, I'm trying to wake them up to their self worth."

The Socialist Workers Party joins with fellow class-conscious workers in battles to defend our class and its allies, working to transform our unions into effective fighting instruments against the propertied rulers and their government. We are part of the fight for a government-funded public works program to create jobs at union-scale pay to replace crumbling infrastructure and build schools, medical, childcare and recreation centers, and other things working people need; for $15 and a union; for free and comprehensive medical care for all; to demand an end to Washington's colonial rule over the people of Puerto Rico; to guarantee women the right to choose abortion; for prosecuting cops who kill or brutalize working people.

The Socialist Workers Party speaks out against Washington's imperialist military attacks — from Iraq to Afghanistan to Syria. SWP candidates fight the rulers' efforts to use workers' revulsion at Islamic State's terrorist acts to scapegoat Muslims and roll back workers' rights. The party speak out against Jew-hatred, which seeks to divert workers attention away from the real enemy: the capitalist system.

Alyson Kennedy campaigns at construction sites in New York February 9, discussing fight for workers control of conditions on the job to enforce safety.

We join in the fight against deportations and e-verify. It doesn't matter whether you are from Mexico or China, Indiana or Texas; it doesn't matter what language you speak or the color of your skin, we need to organize the unorganized into unions and expand solidarity to stand up to the bosses.

SWP candidates have joined rallies of Pennsylvania Steelworkers locked out by Allegheny Technologies and Machinists at Triumph Composites in Spokane battling company bosses' efforts to maintain a divisive two-tier wage system. They have joined protests against police brutality across the country, demanding cops who kill — from the stranglehold death of Eric Garner in New York to Freddie Grey in Baltimore, from cattle rancher Jack Yantis in Council, Idaho, to Robert Lavoy Finicum in Oregon — be charged and jailed. They back the efforts to free Dwight and Steven Hammond, Oregon ranchers jailed twice on the same trumped-up arson charges for defending their right to raise cattle. And to free political prisoners from Puerto Rican independence fighter Oscar López to Leonard Peltier and Mumia Abu Jamal.

The SWP points to the need for working people to break from the bosses' par-ties, build our own independent labor party based on the unions and set out to take political power into our own hands.

The Cuban Revolution: An example for workers today

In the 1950s workers and farmers across Cuba, led by Fidel Castro and the July 26 Movement, launched a movement to overthrow the U.S.-backed Batista dictatorship. They took political power and took control of their own destiny — leading mass mobilizations to overcome illiteracy, and advance culture, health care for all and built a new peoples' army, militia and police out of their own ranks to defend, not oppress, working people. In the process, they became what Che Guevara called "new men," capable of changing the world. They showed that a revolution is not only necessary, it is possible.

Cuba's revolutionary people extend internationalist solidarity, from sending almost 400,000 volunteers to fight against apartheid South Africa's invasion in Angola to sending doctors to help lead the fight against Ebola in West Africa.

Working people everywhere are capable of doing the same thing.

Osborne Hart talks with fellow participant in Oct. 2015 protest against police brutality.

Join with us

Socialist Workers Party candidates and their supporters campaign to discuss these issues confronting our class. As a central part of this they explain that the only way forward is to organize independent working-class struggles that point to-ward overturning the dictatorship of capital, replacing it with a government of workers and farmers and building a new society based on human solidarity and joining the worldwide fight for socialism. That is a life truly worth living.

JOIN THE SOCIALIST WORKERS PARTY CAMPAIGN IN 2016!
Don't organize around who you're against, fight for what you're for!

- ❑ I want to get involved! Contact me so I can join in campaigning for the working-class alternative, Socialist Workers Party candidates Alyson Kennedy for president and Osborne Hart for vice president.
- ❑ Enclosed is my contribution of $_____.
  (Please make checks out to Socialist Workers National Campaign Committee)
- ❑ I would like a 12-week subscription to the *Militant* newspaper.
  ($5 enclosed, checks payable to the Militant.)

Name: _____

Address: _____

City:_____ State:_____ Zip: _____

Phone: _____Email:_____

Union/Organization/School:_____

Socialist Workers Party 2016 Campaign
227 West 29th Street, 6th Floor, New York, NY 10001
646-922-8186 | swp2016campaign@gmail.com

SOLIDARITY WITH THE WORKING PEOPLE OF SYRIA!

The following statement was released March 9 by Alyson Kennedy, Socialist Workers Party candidate for U.S. president, and Osborne Hart, SWP candidate for vice president.

The Socialist Workers Party calls on working people to stand with our fellow workers in Syria — in solidarity with their struggle to throw off the hated dictatorship of Bashar al-Assad, to liberate sections of the country where the toilers have fallen under the tyranny of the reactionary Islamic State, and to aid the Kurdish people in their struggle to win independence and control over the regions where they live. All Syrian working people — Sunni, Shia, Christian, Alawite, Turkmen, Kurdish and others — have a common interest in fighting for these demands.

These struggles require international working-class solidarity. Syrian toilers need the space to mobilize in political action, to learn in struggle, to be transformed from victims into conscious actors in history. All of the imperialist and capitalist forces intervening in Syria today are obstacles to this course. We oppose the U.S. rulers' involvement in the war in Syria and Iraq and call for Washington, its allies and others — from London and Paris to Moscow, Ankara and Tehran — to withdraw their warplanes, ships and troops now.

The relative weakness of U.S. imperialism in the Mideast today is a confirmation that Washington lost the Cold War. The U.S. ruling class lost the political assistance it got from Stalinist regimes and parties, which had used the prestige of their long-broken connection to the mighty Russian Revolution to disorient and destroy workers' struggles worldwide. The vacuum of working-class leadership left by decades of class-collaboration by Stalinist parties in the region and the exhaustion of bourgeois nationalist forces there will take time and political space to fill.

Fearing the consequences of using their raw military might in the Middle East, the U.S. propertied rulers sought a bloc with Moscow and Tehran to replace the deepening disintegration of the old world order, in the futile hope of achieving stability for U.S. imperialism in the region. The truce Washington and Moscow have driven through strengthens the murderous Assad dictatorship, guaranteeing many more working people will be killed or driven from their homes.

"The drawing together of struggles by working people the world over opens the way toward winning more and more revolutionists to become communists, toward rebuilding proletarian leadership and an international communist movement," the Socialist Workers Party's 1990 resolution "U.S. Imperialism Has Lost the Cold War" explains. "The world in the making will see more Malcolm Xs, more Maurice Bishops, more Thomas Sankaras, more Nelson Mandelas, more Che Guevaras, more Fidel Castros. They will continue to be thrust forward through struggle toward the renewal of communist leadership. They will more and more recognize communism as the opposite of Stalinism and social democracy, as a road toward overthrowing world capitalism, not accommodation with it." This perspective remains the way forward out of the devastation in Syria today.

The Cuban Revolution that overthrew the U.S.-backed dictatorship of Fulgencio Batista is an excellent example of how ordinary working people can come together, become stronger and more conscious and build a new society based on human solidarity. The 1954-65 Algerian Revolution led by Ahmed Ben Bella that overthrew French colonialism and established a workers and farmers government in a country where the majority is Muslim and Arab shows what is possible.

Help spread the truth about battles and the class realities unfolding in Syria, help get the Militant newspaper around! Solidarity with the working people of Syria!

JOIN THE SOCIALIST WORKERS PARTY CAMPAIGN IN 2016!
Don't organize around who you're against, fight for what you're for!

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