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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 25-03-A
AGENDA ITEM
For meeting of March 27, 2025

March 20, 2025

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*
Acting General Counsel

Neven F. Stipanovic *NFS*
Associate General Counsel

Robert Knop *RMK*
Assistant General Counsel

Luis Lipchak *LML*
Attorney

Subject: AO 2025-02 (Democratic Party of Puerto Rico) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on March 26, 2025.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

2
3 Luis Dávila-Pernas
4 Chairman, Democratic Party of Puerto Rico
5 1250 Ave. Ponce de Leon
6 San Juan, PR 00907
7

DRAFT A

8 Dear Mr. Dávila-Pernas:

9 We are responding to your request on behalf of Democratic Party of Puerto Rico (the
10 “Requestor”) regarding its status as the state committee of a political party under the Federal
11 Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations. The
12 Commission concludes that the Requestor qualifies as a state committee of a political party.

13 ***Background***

14 The facts presented in this advisory opinion are based on your letter received on February
15 3, 2025, your supplemental submission received on February 6, 2025, public disclosure reports
16 filed with the Commission, and other publicly available information.

17 The Democratic Party is a national political party. The Democratic National Committee
18 (“DNC”) is responsible for the day-to-day functions of the Democratic Party. The DNC
19 confirmed by letter dated January 27, 2025, that the Requestor is the “sole and official State
20 Democratic Party of the Commonwealth of Puerto Rico.”¹ The DNC further stated that
21 Requestor is the only party in Puerto Rico authorized to “elect DNC members and to organize
22 the process for selecting delegates to the Democratic National Convention, the party authority
23 responsible for nominating the Democratic Party’s candidates for President and Vice President of
24 the United States.”²

¹ Advisory Opinion Request (“AOR”) at AOR006.

² *Id.*

1 The Requestor is a Democratic Party organization operating within Puerto Rico, an
2 unincorporated territory of the United States.³ The charter of the Democratic Party states that
3 “Puerto Rico shall be treated as a state” for purposes of the charter and recognizes state party
4 rules relating to the election of delegates to the Democratic National Convention.⁴ Accordingly,
5 the Requestor established the Puerto Rico Delegate Selection Plan to elect delegates to the
6 Democratic National Convention through a “primary election to establish presidential preference
7 and election of delegates.”⁵ The Requestor also adopted rules regarding the Puerto Rico
8 Democratic Presidential Primary Process and such rules were approved by both the DNC and the
9 Puerto Rico Elections Commission.⁶

10 The Requestor obtained ballot access for Joe Biden on the 2024 primary election ballot in
11 Puerto Rico.⁷ Joe Biden appeared as a candidate of Requestor on the primary election ballot and
12 election results from the Puerto Rico State Elections Commission displayed the Requestor’s seal
13 next to Joe Biden picture and name.⁸ Joe Biden’s campaign committee reported receiving
14 contributions or making expenditures in excess of \$5,000 during the 2024 presidential election
15 cycle.⁹

³ See AOR007-30; 48 U.S.C. § 731.

⁴ AOR015.

⁵ AOR002, 61-133.

⁶ AOR002.

⁷ See *id.*, 59-60.

⁸ *Id.*

⁹ See Biden for President, *FEC Financial Summary of Reported Activity* at https://www.fec.gov/data/individual-contributions/?committee_id=C00703975&two_year_transaction_period=2024&max_date=07%2F21%2F2024 (reflecting the candidate’s receipts of more than \$5,000 for the 2024 election cycle up to July 21, 2024). Committee C00703975 was organized as the Biden for President committee until July 21, 2024, when it notified the Commission that Vice President Harris was to be the candidate for President and accordingly changed the name of

Pursuant to its bylaws, the Requestor engages in various political party activities in Puerto Rico.¹⁰ These activities include promoting Democratic Party principles, endorsing candidates for public office, sending delegates to the Democratic Party's national convention, overseeing presidential primaries in Puerto Rico, and organizing itself as the state committee of the Democratic Party.¹¹ The Requestor's bylaws also provide the requirements for membership, establishment and composition of a Central Committee and Executive Committee.¹² The Executive Committee among other things is responsible for the general affairs of the Requestor, its bylaws, delegate selection plan, fundraising events, appointments, creation of advisory committees, and coordination of political strategy.¹³ The Requestor further engages in community outreach through its website, newspaper advertising, and other media.¹⁴

Question Presented

Does the Requestor qualify as a state committee of a political party within the meaning of the Act and Commission regulations?

Legal Analysis

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

the committee to Harris for President.

¹⁰ See generally AOR Supplement, Bylaws Democratic Party of Puerto Rico.

¹¹ *Id.*, see also AOR003.

¹² AOR Supplement at 5-9.

¹³ *Id.* at 8.

¹⁴ AOR003.

1 The Requestor is a Democratic Party organization operating within Puerto Rico, an
2 unincorporated territory of the United States.¹⁵ The Act defines “state” to include a territory or
3 possession of the United States.¹⁶

4 Whether a state party organization qualifies as a state committee of a national political
5 party turns on three elements: (1) the national organization affiliated with the state party
6 organization must itself be a “political party;”¹⁷ (2) the state party organization must be part of
7 the official structure of the national party; and (3) the state party organization must be
8 responsible for the day-to-day operation of the national party at the state level.¹⁸ The
9 Commission addresses each of these elements in turn.

10 (1) *Qualification of the Democratic Party as Political Party*

11 The Democratic Party has placed numerous candidates for federal offices on election
12 ballots in every state. Accordingly, the Democratic Party is a “political party” for purposes of
13 the Act and Commission regulations.¹⁹

¹⁵ AOR001; *see* 48 U.S.C. § 731.

¹⁶ 52 U.S.C. § 30101(12).

¹⁷ A “political party” is an “association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization.” 52 U.S.C. § 30101(16); 11 C.F.R. § 100.15. An individual is a candidate if the individual or his or her authorized committee has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000. *See* 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a)(1).

¹⁸ *See, e.g.*, Advisory Opinion 2024-15 (United Libertarians of Massachusetts); Advisory Opinion 2023-12 (Democratic Party of the Northern Mariana Islands); Advisory Opinion 2019-03 (DC Libertarian Party).

¹⁹ *See* Advisory Opinion 2023-12 (Democratic Party of the Northern Mariana Islands) at 3 (recognizing at the Democratic Party is a “political party” for purposes of the Act and Commission regulations).

(2) *Status of the Requestor as Part of the Official Structure of Party*

To determine whether a state party organization is part of the official structure of a national party, the Commission evaluates documentation from the national party.²⁰ The letter from the DNC confirms that the Requestor is part of the official structure of the Democratic Party.²¹

(3) *Responsibility of the Requestor for Day-to-Day Operation of the Party at the State Level*

To determine whether a state party organization is responsible for the day-to-day operations of a national party at the state level, the Commission considers: (a) whether the state organization has assisted in obtaining ballot access for a federal candidate, and (b) whether the bylaws or other governing documents of the state party organization indicate activity commensurate with the day-to-day functions and operations of a political party at the state level.²²

(a) *Candidate on the Ballot*

The Requestor obtained ballot access for Joe Biden on the 2024 primary election ballot in Puerto Rico.²³ Joe Biden's campaign committee received contributions or made expenditures in

²⁰ See, e.g., Advisory Opinion 2024-15 (United Libertarians of Massachusetts); Advisory Opinion 2023-12 (Democratic Party of the Northern Mariana Islands); Advisory Opinion 2019-03 (DC Libertarian Party).

²¹ See AOR006.

²² See, e.g., Advisory Opinion 2024-15 (United Libertarians of Massachusetts); Advisory Opinion 2023-12 (Democratic Party of the Northern Mariana Islands); Advisory Opinion 2019-03 (DC Libertarian Party).

²³ See AOR002, 59-60.

1 excess of \$5,000 according to public disclosure reports filed with the Commission, therefore
2 satisfying the Act’s definition of a “candidate.”²⁴

3 (b) *Day-To-Day Functions and Operations*

4 In addition to gaining ballot access for a candidate for federal office, the Requestor must
5 show, in its bylaws, constitution, or other governing documents, that it is responsible for activity
6 commensurate with the day-to-day functions and operations of a national political party at the
7 state level.

8 Here, the bylaws indicate that the Requestor engages in various political party activities
9 in Puerto Rico.²⁵ These activities include promoting Democratic Party principles, endorsing
10 candidates for public office, sending delegates to the Democratic Party’s national convention,
11 overseeing presidential primaries in Puerto Rico, and organizing as the state committee of the
12 Democratic Party.²⁶ The Requestor’s bylaws also provide the requirements for membership,
13 establishment and composition of a Central Committee and Executive Committee including the
14 election of members to such committees.²⁷ The Executive Committee among other things is
15 responsible for the general affairs of the Requestor, its bylaws, delegate selection plan,
16 fundraising events, appointments, creation of advisory committees and coordination of political
17 strategy.²⁸

²⁴ See 2 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

²⁵ See generally AOR Supplement.

²⁶ *Id.*, see also AOR003; See e.g. Advisory Opinion 2019-03 (DC Libertarian Party) (noting that nominating and sending delegates to party’s national convention, and managing District of Columbia party conventions, are activities commensurate with the day-to-day operation of a political party at the state level).

²⁷ AOR Supplement at 5-9.

²⁸ *Id.* at 8.

1 The Requestor's bylaws indicate activity commensurate with the day-to-day functions
2 and operations of a political party at the state level and are similar to other state party rules that
3 the Commission has found sufficient to qualify an organization for state-committee status.²⁹ The
4 Requestor therefore satisfies the requirement of being responsible for the day-to-day operation of
5 the Democratic Party at the state level pursuant to 52 U.S.C. § 30101(15) and 11 C.F.R.
6 § 100.14(a).

7 The Commission concludes that the Requestor qualifies as the state committee of a
8 political party under the Act and Commission regulations because: (1) the Democratic Party
9 qualifies as a "political party"; (2) the Requestor is part of the official structure of the
10 Democratic Party; and (3) the Requestor is responsible for the day-to-day operation of the
11 Democratic Party at the state level.

12 This response constitutes an advisory opinion concerning the application of the Act and
13 Commission regulations to the specific transaction or activity set forth in your request.³⁰ The
14 Commission emphasizes that, if there is a change in any of the facts or assumptions presented,
15 and such facts or assumptions are material to a conclusion presented in this advisory opinion,

²⁹ *See, e.g.*, Advisory Opinion 2024-15 (United Libertarians of Massachusetts) (concluding that requestor's responsibilities to promote party principles, endorse candidates for public office, send delegates to the party's national convention, and recognize local affiliates, among other duties detailed in its bylaws, demonstrated requestor's responsibility for day-to-day functions and operations of national party at the state level); Advisory Opinion 2023-12 (Democratic Party of the Northern Mariana Islands) (concluding that requestor's responsibilities to nominate candidates for state and federal offices, elect delegates to national party's national convention, and organize membership meetings at which delegates to national convention are elected, among other duties detailed in its bylaws, demonstrated requestor's responsibility for day-to-day functions and operations of national party to qualify for state committee status); Advisory Opinion 2019-03 (DC Libertarian Party) (finding that requestor's political party activities described in its bylaws including recruiting, nominating and training candidates for partisan public office, nominating and sending delegates to party's national convention, managing District of Columbia party conventions, and other duties established requestor's responsibility for day-to-day operation of national party at state level to qualify for state committee status).

³⁰ *See* 52 U.S.C. § 30108.

1 then the Requestor may not rely on that conclusion as support for its proposed activity. Any
2 person involved in any specific transaction or activity which is indistinguishable in all its
3 material aspects from the transaction or activity with respect to which this advisory opinion is
4 rendered may rely on this advisory opinion.³¹ Please note that the analysis or conclusions in this
5 advisory opinion may be affected by subsequent developments in the law including, but not
6 limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited
7 herein are available on the Commission's website.

8 On behalf of the Commission,
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10
11

12 James E. "Trey" Trainor III,
13 Acting Chairman

³¹ See *id.* § 30108(c)(1)(B).