



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**CONCURRING OPINION OF CHAIR ELLEN L. WEINTRAUB
IN ADVISORY OPINION 2012-38**

Today the Commission provided a response to the Advisory Opinion Request filed by the Socialist Workers Party, the Socialist Workers National Campaign Committee, and committees supporting candidates of the Socialist Workers Party (collectively, “SWP”). SWP asked the Commission to renew until December 31, 2016 the partial reporting exemption that the Commission first granted to SWP in 1979. I voted to grant the request, and write separately to provide more detail on my reasons for doing so. In my view, the continuation of the exemption was warranted because of the SWP’s unique history, the very low probability that the SWP’s activities would affect the outcome of a federal election, and the extremely limited amount of information that would fall within the exemption.

In deciding whether to grant this extension, the Commission had to weigh the danger of violence or harassment against the governmental interest in identifying contributors and recipients of funds. Disclosure is critically important to our campaign finance system. It “fosters civic courage”¹ and it helps voters to “make informed decisions and give proper weight to different speakers and messages.”² However, in these limited circumstances, “the governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election.”³

The SWP has a long record of facing widespread harassment and intimidation, perhaps more than any other minor party. As Advisory Opinion 2012-38 explains, though the record of harassment over the last several years has not been as severe as in earlier periods of SWP’s history, it is still quite substantial when viewed in comparison to the size of the organization’s activity.⁴ SWP received only \$1,222 in contributions from 2009 through 2011, and only approximately \$16,087 in 2012. Only 118 people contributed to the committee in 2012, even fewer than the 243 people who contributed in 2008. And despite fielding a presidential candidate in every election since 1948 and numerous other candidates for Federal, State and local offices, no SWP candidate has ever been elected to public office in a partisan election.

¹ *Doe v. Reed*, __U.S. __, 130 S.Ct. 2811, 2837 (2010) (Scalia, J., concurring in the judgment).

² *Citizens United v. FEC*, 558 U.S. 310, 371 (2010).

³ *Buckley v. Valeo*, 424 U.S. 1, 70 (1976).

⁴ *Cf. ProtectMarriage.com v. Bowen*, 830 F. Supp. 2d 914, 932 (E.D. Cal. 2011) (finding the evidence of acts of violence to be very small relative to the overall number of supporters).

For me, SWP's exceptionally limited activity, balanced against their long history and continued experience of harassment, weighed in favor of granting a further partial exemption. To be sure, in some cases, "a minor party... can play a significant role in an election" by "divert[ing] votes from other major-party contenders."⁵ However, there is no indication that SWP has played such a role in any federal election.

For these reasons, I voted for Advisory Opinion 2012-38.

⁵ *Buckley*, 424 U.S. at 70; *see, e.g., U.S. v. Goland*, 959 F.2d 1449 (9th Cir. 1992).