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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 19-11-A

AGENDA ITEM

For meeting of March 28, 2019

March 21, 2019

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
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Acting Associate General Counsel

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Acting Assistant General Counsel

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Subject: Draft AO 2019-03 (DC Libertarian Party) 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, 27, 2019.

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

1 ADVISORY OPINION 2019-03

2

3 Mr. Joseph Henchman
4 DC Libertarian Party
5 415 W Street NW, #A
6 Washington, DC 20002

DRAFT A

7

8 Dear Mr. Henchman:

9

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

14 ***Background***

15 The facts presented in this advisory opinion are based on your letter received on
16 January 28, 2019¹, the Committee’s bylaws and District of Columbia Board of Elections
17 certified election results attached thereto, a letter from the Libertarian National
18 Committee received on February 14, 2019, and on public disclosure reports filed with the
19 Commission.

20 In 1976, the Commission determined that the Libertarian National Party (the
21 “LNP”) qualified as a political party. Advisory Opinion 1975-129 (National Committee
22 of the Libertarian Party). The LNP’s national committee is the Libertarian National
23 Committee, Inc. (the “LNC”). The LNC’s Director of Operations, Mr. Robert S. Kraus,
24 has confirmed by letter that the Committee is the LNC’s “sole qualifying organization in
25 DC.” Advisory Opinion Request at AOR116.

¹ Although the letter is dated December 26, 2018, due to the partial government shutdown it was not received until January 28, 2019.

1 The Committee placed the LNP’s presidential nominee, Gary Johnson, on the
2 general election ballot in the District of Columbia in 2012 and 2016. *See* AOR001,
3 AOR045, AOR077. Gary Johnson’s authorized committees for the 2012 and 2016
4 presidential election cycles each reported receiving contributions or making expenditures
5 in excess of \$5,000.²

6 The Committee also placed nominees for Delegate to the United States House of
7 Representatives on the general election ballot in the District of Columbia in 2012, 2016,
8 and 2018.³ *See* AOR001, AOR006, AOR045, AOR077. One of those nominees, Bruce
9 Majors, received contributions or made expenditures in excess of \$5,000 during the 2012
10 general election cycle.⁴

11 Pursuant to its bylaws, the Committee engages in various political party activities
12 in the District of Columbia. *See generally* AOR002-005. These activities include
13 recruiting and nominating candidates for partisan public office and sending delegates to
14 the LNP’s national convention. *Id.* The bylaws also contain provisions on the payment
15 of dues and the timing and procedures for holding District of Columbia party

² *See, e.g.,* Gary Johnson 2012 Inc., *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00495622/?cycle=2012> (reflecting candidate’s receipt and disbursement of over \$2.7 million during 2012 election cycle); Gary Johnson 2016, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00605568/?cycle=2016> (reflecting candidate’s receipt and disbursement of over \$11.7 million during 2016 election cycle).

³ Bruce Majors was the LNP candidate for Delegate to the United States House of Representatives on the general election ballot for the District of Columbia in both 2012 and 2018. Martin Moulton was the LNP candidate for Delegate to the United States House of Representatives on the general election ballot for the District of Columbia in 2016.

⁴ *See* Bruce Majors for Congress, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00528778/> (reflecting candidate’s receipt and disbursement of over \$22,000 during 2012 general election).

1 conventions, nominating candidates for public office, and the election of delegates to the
2 LNP's national convention. *Id.*

3 ***Question Presented***

4 *Does the Committee qualify as a state committee of a political party under the Act*
5 *and Commission regulations?*

6 ***Legal Analysis and Conclusion***

7 Yes, the Committee qualifies as the state committee of a political party under the
8 Act and Commission regulations.

9 A “[s]tate committee” is an organization that, “by virtue of the bylaws of a
10 political party . . . is part of the official party structure and is responsible for the day-to-
11 day operation of the political party at the [s]tate level . . . as determined by the
12 Commission.” 11 C.F.R. § 100.14(a); *see* 52 U.S.C. § 30101(15). A “political party” is
13 an “association, committee, or organization which nominates or selects a candidate for
14 election to any [f]ederal office, whose name appears on an election ballot as the candidate
15 of the association, committee, or organization.” 11 C.F.R. § 100.15; *see* 52 U.S.C.
16 § 30101(16). The District of Columbia constitutes a “state” for purposes of the Act and
17 Commission regulations. *See* 52 U.S.C. § 30101(12); 11 C.F.R. § 100.11.

18 The determination of whether a state party organization qualifies as a state
19 committee of a national political party turns on three elements: (1) the national
20 organization with which the state party organization is affiliated must itself be a “political
21 party”; (2) the state party organization must be part of the official structure of the national
22 party; and (3) the state party organization must be responsible for the day-to-day
23 operation of the national party at the state level. *See, e.g.,* Advisory Opinion 2018-01

1 (Libertarian Party of Utah); Advisory Opinion 2017-09 (Libertarian Association of
2 Massachusetts); Advisory Opinion 2016-17 (Libertarian Party of Michigan Executive
3 Committee); Advisory Opinion 2016-14 (11 Libertarian State Committees). The
4 Commission addresses each of these elements in turn below.

5 (1) *Qualification of the LNP as Political Party*

6 The national party, the LNP, must qualify as a “political party” under the Act and
7 Commission regulations, and the Commission has previously determined that it does.
8 *See* Advisory Opinion 1975-129 (National Committee of the Libertarian Party). The
9 Commission is not aware of any factual changes that would alter that determination.

10 (2) *Status of the Committee as Part of the Official Structure of the LNP*

11 To determine whether a state party organization is part of the official structure of
12 a national party, the Commission evaluates documentation from the national party, often
13 in the form of a letter from an officer of the national party recognizing the state party
14 organization as its sole state-level affiliate. *See, e.g.*, Advisory Opinion 2018-01
15 (Libertarian Party of Utah) at 3; Advisory Opinion 2017-09 (Libertarian Association of
16 Massachusetts) at 4; Advisory Opinion 2016-17 (Libertarian Party of Michigan Executive
17 Committee) at 3. The letter from Mr. Robert S. Kraus, Director of Operations of the
18 LNC, confirms that the Committee is part of the official structure of the LNP. *See*
19 AOR116.

20 (3) *Responsibility of the Committee for Day-to-Day Operation of the LNP at*
21 *the State Level*

22 To determine whether a state party organization is responsible for the day-to-day
23 operation of a national party at the state level, the Commission considers: (a) whether the

1 state organization has placed a federal candidate on the ballot (thereby qualifying as a
2 “political party” under 52 U.S.C. § 30101(16)); and (b) whether the bylaws or other
3 governing documents of the state party organization indicate activity commensurate with
4 the day-to-day functions and operations of a political party at the state level.
5 *See, e.g.*, Advisory Opinion 2018-01 (Libertarian Party of Utah) at 3-4; Advisory Opinion
6 2017-09 (Libertarian Association of Massachusetts) at 4; Advisory Opinion 2016-17
7 (Libertarian Party of Michigan Executive Committee) at 3.

8 (a) *Candidate on the Ballot*

9 Because an organization must place a federal candidate on the ballot to qualify as
10 a “political party,” *see* 52 U.S.C. § 30101(16); 11 C.F.R. § 100.15, an organization must
11 obtain ballot access for a federal candidate to qualify as a “state committee” of a political
12 party. *See* 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a); Advisory Opinion 2018-01
13 (Libertarian Party of Utah) at 3-4; Advisory Opinion 2017-09 (Libertarian Association of
14 Massachusetts) at 4; Advisory Opinion 2016-17 (Libertarian Party of Michigan Executive
15 Committee) at 3-4; Advisory Opinion 2016-14 (11 Libertarian State Committees) at 3.

16 The Committee placed the LNP’s nominee for President, Gary Johnson, on the
17 general election ballot in the District of Columbia in 2012 and 2016. *See* AOR001,
18 AOR045, AOR077. During the 2012 and 2016 presidential election cycles, Gary
19 Johnson received contributions or made expenditures in excess of \$5,000 according to
20 public disclosure reports filed with the Commission, therefore satisfying the Act’s
21 definition of a “candidate.” *See* 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a); *supra* note
22 1. In addition, the Committee placed LNP nominees for Delegate to the United States
23 House of Representatives on the general election ballot in the District of Columbia in

1 2012, 2016, and 2018. *See* AOR001, AOR006, AOR045, AOR077. Because one of
2 those nominees, Bruce Majors, received contributions or made expenditures in excess of
3 \$5,000 during the 2012 general election cycle, Mr. Majors also satisfied the Act’s
4 definition of a “candidate” during that election cycle. *See* 52 U.S.C. § 30101(2); 11
5 C.F.R. § 100.3(a); *supra* note 3.

6 (b) *Day-To-Day Operation*

7 In addition to gaining ballot access for a candidate for federal office, the
8 Committee must show, in its bylaws, constitution, or other governing documents, that it
9 is responsible for activity commensurate with the day-to-day operation of a national
10 political party at the state level. *See* 52 U.S.C. § 30101(15); 11 C.F.R. § 100.14(a).

11 Here, the bylaws indicate that the Committee engages in various political party
12 activities in the District of Columbia. *See generally* AOR002-005. These activities
13 include recruiting, nominating and training candidates for partisan public office, sending
14 delegates to the LNP’s national convention, and coordinating fundraising activities and
15 get-out-the-vote efforts. *Id.* The bylaws also provide for the payment of membership
16 dues, and the timing and procedures for holding District of Columbia party conventions,
17 nominating candidates for public office, and the election of delegates to the LNP’s
18 national convention. *Id.*

19 The aforementioned activities described in the Committee’s bylaws are
20 commensurate with the day-to-day operation of a political party at the state level and are
21 similar to other state party functions that the Commission has found sufficient to qualify
22 an organization for state-committee status. *See, e.g.,* Advisory Opinion 2018-01
23 (Libertarian Party of Utah) at 4; Advisory Opinion 2017-09 (Libertarian Association of

1 Massachusetts) at 5; Advisory Opinion 2016-17 (Libertarian Party of Michigan Executive
2 Committee) at 4; Advisory Opinion 2016-14 (11 Libertarian State Committees) at 3-7;
3 Advisory Opinion 2012-39 (Green Party of Virginia) at 4-5. The Committee therefore
4 satisfies the requirement of being responsible for the day-to-day operation of the LNP at
5 the state level pursuant to 52 U.S.C. § 30101(15) and 11 C.F.R. § 100.14(a).

6 ***Conclusion***

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

12 This response constitutes an advisory opinion concerning the application of the
13 Act and Commission regulations to the specific transaction or activity set forth in your
14 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change
15 in any of the facts or assumptions presented, and such facts or assumptions are material to
16 a conclusion presented in this advisory opinion, then the requestor may not rely on that
17 conclusion as support for its proposed activity. Any person involved in any specific
18 transaction or activity which is indistinguishable in all its material aspects from the
19 transaction or activity with respect to which this advisory opinion is rendered may rely on
20 this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or
21 conclusions in this advisory opinion may be affected by subsequent developments in the
22 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
23 Any advisory opinions cited herein are available on the Commission's website.

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On behalf of the Commission,

Ellen L. Weintraub
Chair