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FEDERAL ELECTION COMMISSION
Washington, DC 20463

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February 1, 2007

MEMORANDUM

AGENDA ITEM
For Meeting of: 02-08-07

TO: The Commission

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Amy L. Rothstein *AR*
Acting Assistant General Counsel

Cheryl A.F. Hemsley *CAH*
Attorney

Subject: Draft AO 2006-36

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for February 8, 2007.

Attachment

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DRAFT 2:14

1 ADVISORY OPINION 2006-36
2
3 Dean Myerson, Treasurer
4 Green Senatorial Campaign Committee
5 P.O. Box 8845
6 Minneapolis, MN 55408

7
8 Dear Mr. Myerson:

9 We are responding to your advisory opinion request on behalf of the Green
10 Senatorial Campaign Committee (the "GSCC"), concerning the application of the Federal
11 Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to
12 the GSCC's potential status as the national senatorial campaign committee of the Green
13 Party of the United States (the "Green Party").

14 The Commission concludes that the GSCC qualifies as the national senatorial
15 campaign committee of the Green Party. As such, the GSCC may make contributions to
16 senatorial candidates in conjunction with the National Committee of the Green Party
17 ("GNC"); may make contributions to other candidates and political committees; may make
18 coordinated party expenditures if the GNC or a State committee of the Green Party assigns
19 to the GSCC its rights to do so; and is required to file reports with the Commission on a
20 monthly basis.

21 ***Background***

22 The facts presented in this advisory opinion are based on your letter received on
23 November 20, 2006, as supplemented by your November 30, 2006, submission.

24 The GSCC is a political committee that was established by the GNC by resolution
25 dated June 18, 2006, as the senatorial campaign committee of the Green Party, to promote
26 and support ballot access drives and the campaigns of Green Party candidates for the U.S.
27 Senate, as well as to support other party building activities. In July 2006, the GNC named

1 seven individuals to comprise the GSCC. The GSCC met by teleconference and began
2 conducting business soon thereafter. Under the GSCC bylaws, an individual elected to the
3 U.S. Senate on the Green Party ticket will automatically become a member of the GSCC.¹

4 The GSCC filed its Statement of Organization with the Commission on
5 September 8, 2006, and opened a bank account, into which it deposited over \$1,000 in
6 contributions, in October 2006. The GSCC maintains offices in Minneapolis, Minnesota.

7 In the 2006 elections, the Green Party's State affiliates placed eleven individuals on
8 the ballot for the U.S. Senate in eleven States,² at least seven of whom qualified as
9 "candidates" under 2 U.S.C. 431(2) and 11 CFR 100.3(a). Two additional individuals
10 running for the U.S. Senate received the sole endorsement of State parties affiliated with
11 the Green Party in their States, but appeared on the ballot only as Independents, not as
12 Green Party candidates. All of these individuals submitted affidavits supporting the
13 GSCC's advisory opinion request.

14 The GSCC raised funds and made contributions to the 2006 Green Party candidates
15 for Senate, in part, to support ballot access, voter registration, voter identification, and get-
16 out-the-vote activities for the purpose of party building. Members of the GSCC also
17 participated in party building activities in three States where Green Party candidates were
18 running for the Senate. Further, four of the Green Party candidates conducted voter
19 registration drives in their respective States to "register [new voters] as 'Green,'" and all
20 eleven Green Party candidates engaged in voter identification and get-out-the-vote

¹ This is consistent with the operation of the National Republican Senatorial Committee and the Democratic Senatorial Campaign Committee.

² Those States are California, Connecticut, Maryland, Michigan, Minnesota, Missouri, New York, Utah, Vermont, Washington, and Wisconsin.

1 activities. GSCC maintains a website to support its candidates and to publicize the GSCC's
2 policy priorities, at www.GreenSCC.org.

3 Additionally, the Green Party placed seven candidates for the U.S. Senate on the
4 ballot between 1998 and 2004 in five different States.³ Each of these candidates also
5 submitted an affidavit supporting the GSCC's advisory opinion request.

6 ***Questions Presented***

7 1. *Is the GSCC the national senatorial campaign committee of the Green Party?*

8 If the answer to Question 1 is "yes":

9 2. *What are the amount limits for contributions made and received by the GSCC?*

10 3. *May the GSCC make coordinated party expenditures?*

11 4. *What reporting requirements apply to the GSCC?*

12 ***Legal Analysis and Conclusions***

13 1. *Is the GSCC the national senatorial campaign committee of the Green Party?*

14 Yes, the Commission recognizes the GSCC as the national senatorial campaign
15 committee of the Green Party.

16 A "party committee" is a political committee that represents a political party and is
17 part of the official party structure at the national, State, or local level. 2 U.S.C. 431(4); 11
18 CFR 100.5(e)(4). A "national committee" is "the organization which, by virtue of the
19 bylaws of a political party, is responsible for the day-to-day operation of such political
20 party at the national level, as determined by the Commission." 2 U.S.C. 431(14); 11 CFR
21 100.13. A senatorial campaign committee is one type of national party committee.

³ Those states are Alaska, California, New York (candidates in 1998, 2000, and 2004), New Jersey, and Oregon.

1 Your request that the Commission recognize the national senatorial campaign
2 committee of a political party is one of first impression for the Commission. As noted,
3 “national committee” status is to be “determined by the Commission.” 2 U.S.C. 431(14).
4 The Democratic and Republican parties are the only political parties that currently have
5 senatorial campaign committees. Both the Democratic Senatorial Campaign Committee
6 and the National Republican Senatorial Committee predate the Act and the Commission,
7 and are specifically referenced in the Act. *See* 2 U.S.C. 441a(h). The Commission
8 understands this reference – which dates to 1976 – to simply reflect the political state of
9 affairs at the time the Act was written, and discerns no congressional intent to prohibit
10 other *bona fide* national parties from establishing and maintaining senatorial campaign
11 committees.

12 The Commission has previously made determinations as to whether a political
13 committee of a political party qualified as the national committee of the political party.⁴
14 Accordingly, the Commission employs the analysis that it used previously in making those
15 determinations, with a slight modification to take into account the GSCC’s sole focus on
16 electing U.S. Senate candidates.

17 The first question in determining whether a political committee is a national
18 committee of a political party is whether the party itself qualifies as a “political party”
19 under the Act and Commission regulations. *See, e.g.*, Advisory Opinions 2001-13 (Green
20 Party) and 1998-2 (Reform Party of the United States of America). The Commission has
21 previously determined that the Green Party qualifies as a political party and that the GNC

⁴ *See, e.g.*, Advisory Opinions 2001-13 (Green Party) and 1996-35 (Greens/Green Party USA), 1998-2 (Reform Party of the United States of America), 1995-16 and 1992-44 (U.S. Taxpayers Party), 1992-30 (Natural Law Party of the United States of America), and 1988-45 (Populist Party of America).

1 qualifies as the national committee of the Green Party. *See* Advisory Opinion 2001-13.

2 The Commission is aware of no factual changes that would alter that conclusion.

3 The second question is whether the committee in question has demonstrated
4 sufficient activity on a national level to attain national committee status. *See, e.g.,*
5 Advisory Opinions 2001-13 and 1998-2. “A party committee demonstrates that it operates
6 at the national level by the nomination of candidates for various Federal offices in
7 numerous States; by engaging in certain activities on an ongoing basis (rather than with
8 respect to a particular election) such as supporting voter registration and get-out- the-vote
9 drives; and by publicizing issues of importance to the party and its adherents throughout
10 the nation. Other indicia include the holding of a national convention, the establishment of
11 a national office and the establishment of State affiliates. *See* Advisory Opinions 1998-2,
12 1996-35, 1995-16, 1992-44, and 1992-30.” Advisory Opinion 2001-13.

13 The GSCC has participated in and supported party building activities, such as voter
14 identification and registration, and get-out-the-vote activities, in a number of States. It
15 established a national office in Minnesota, held meetings, opened a bank account, and
16 maintains a website to publicize issues of importance to the Green Party and to support its
17 candidates.

18 “However, the most important element in determining whether a party committee
19 operates at the national level is the degree to which its successful ballot access efforts
20 extend beyond the Presidential and Vice-Presidential level to other Federal races as well.
21 *See* Advisory Opinions 1998-2, 1996-35, 1995-16, 1992-44, and 1992-30.” *Id.* The
22 Commission has recognized the national party committee status of only those committees
23 whose activities were broadly focused – such as on multiple races or offices in more than

1 one State or geographical area. *See* Advisory Opinions 2001-13 (recognizing national
2 committee status of Green Party in part because “from 1998 to 2001, 16 individuals in 8
3 States, in several different sections of the nation, qualified as candidates under the Act and
4 achieved ballot access, as Green Party Congressional candidates”); 1998-2 (recognizing
5 national committee status of Reform Party in part because “16 individuals in 8 States, in
6 several different sections of the nation, qualified as candidates under the Act and achieved
7 ballot access in 1996 as Reform Party Congressional candidates”); 1995-16 (recognizing
8 national committee status of U.S. Taxpayer’s Party in part because “[i]n the 1994 election
9 cycle, the Party achieved ballot access for fourteen candidates in six states, which are
10 located in several different sections of the nation”); 1992-30 (recognizing national
11 committee status of Natural Law Party in part because party documentation stated that “31
12 Party candidates to the U.S. Congress are on the ballot in 14 states”).⁵ Further, individuals
13 running for Federal office on the party’s ticket must qualify as candidates under the Act
14 and Commission regulations. *See, e.g.*, Advisory Opinion 1996-35 (Greens/Green Party
15 USA). *See also* 2 U.S.C. 431(2); 11 CFR 100.3(a).

⁵ “In previous advisory opinions, the Commission concluded that a committee or political party did not qualify for national committee status if its activity was focused solely on the Presidential and Vice-Presidential election (Advisory Opinions 1980-131 and 1978-58), or if it was limited to one State (Advisory Opinion 1976-95), or if it had only very few Federal candidates on State ballots (Advisory Opinions 1992-44 and 1988-45)” Advisory Opinion 2001-13 fn 6. *See* Advisory Opinions 1996-35 (denying national committee status to Green Party in part because “in the 1996 general election, the Party had achieved ballot access in only five states for only eight of its candidates seeking election to the U.S. House or Senate”); 1992-44 (denying national committee status to U.S. Taxpayer Party in part because “in the 1992 general election, the U.S. Taxpayer Party had achieved ballot access in only three states for candidates seeking election to the U.S. Congress or Senate”); 1988-45 (denying national committee status to Populist Party of America in part because “[o]utside of the appearance of the Populist Party presidential and vice presidential candidates on twelve state ballots, there were no Populist Party candidates for Federal office on the ballot in any state but Pennsylvania where there was one Senate candidate and a House candidate in four of the state’s twenty-three Congressional Districts”); 1980-131 (National Unity Campaign for John Anderson) (denying national committee status to National Unity Campaign for John Anderson in part because it “only supported John Anderson’s campaign for President and that of his vice presidential running mate, Patrick Lucey”); and 1978-58 (Pyramid Freedom Party) (denying national committee status to Pyramid Freedom Party in part because it was “a one candidate party which intends to make expenditures on behalf of . . . a candidate for President”).

1 In this instance, because the GSCC's purpose is to promote and support the ballot
2 access drives of its candidates, and to elect those candidates to the U.S. Senate, we examine
3 the scope of those efforts. Eleven individuals ran on the Green Party's ticket⁶ (at least
4 seven of whom qualified as candidates under the Act and Commission regulations) on
5 ballots in the 2006 U.S. Senate races in eleven States across the nation. *See supra* fn 2.
6 Bearing in mind that the GSCC's mission involved a maximum of only 33 U.S. Senate
7 races in 2006, these figures compare very favorably to those considered in Advisory
8 Opinions 2001-13 and 1998-2, both of which considered a national party's success in
9 placing candidates on ballots for *all* Federal races (President and Vice President, 33 Senate
10 races, and 435 House of Representative races). Thus, the GSCC has demonstrated the
11 requisite ability to gain ballot access in a number of States in different geographic areas.

12 Considering all of the factors together, the Commission concludes that the GSCC
13 has undertaken sufficient activity to qualify as a national committee of a political party, and
14 specifically, as the national senatorial campaign committee of the Green Party.

15 2. *What are the amount limits for contributions made and received by the GSCC?*

16 A. *Contributions Made by the GSCC*

17 The Act permits the "Republican or Democratic Senatorial Campaign Committee,
18 or the national committee of a political party, or any combination of such committees," to
19 make contributions not exceeding \$39,900 for the 2007-2008 election cycle to candidates

⁶ The two Senate candidates mentioned in your request who were endorsed by the Green Party but who were designated on the ballot only as "Independent," with no mention of the Green Party, did not qualify as Green Party candidates for purposes of this analysis. Compare this situation with that presented in Advisory Opinion 1998-2, in which the Commission determined that candidates "identified on the ballot with a designation of the national party or its affiliate that is requesting national committee status" and as "Independent" would be considered candidates of the party requesting national committee status, for ballot access purposes.

1 for the U.S. Senate during a six-year election cycle. 2 U.S.C. 441a(h); *see also* 11 CFR
2 110.2(e)(1).

3 To read this provision to provide the national committee of any political party other
4 than the Republican party or the Democratic party with the entire limit for contributions to
5 that party's senatorial candidates, regardless of whether that political party also had a
6 senatorial campaign committee, would be inconsistent with the Commission's
7 understanding of congressional intent. Instead, because we find no congressional intent to
8 prohibit the formation and recognition of other party's senatorial campaign committees,
9 and because the GSCC is engaging in activity materially indistinguishable from that of the
10 established senatorial campaign committees (the National Republican Senatorial
11 Committee and the Democratic Senatorial Campaign Committee), we interpret 2 U.S.C.
12 441a(h) to permit the GSCC and the GNC to share the contribution limit to Senate
13 candidates.

14 Once the GSCC has qualified and registered with the Commission as a
15 multicandidate political committee under 2 U.S.C. 441a(a)(4) and 11 CFR 100.5(e)(3) and
16 102.2(a)(3), the GSCC may contribute up to \$5,000 per election to Federal candidates other
17 than Senate candidates, and up to \$5,000 per calendar year to any other political
18 committee.⁷ *See* 2 U.S.C. 441a(a)(2)(A) and (C); 11 CFR 110.2(b)(1) and 110.2(d).

19 *B. Contributions Received by the GSCC*

20 As a national committee of a political party, the GSCC may receive up to \$28,500
21 per calendar year during 2007 and 2008 from individuals and persons other than
22 multicandidate political committees, and up to \$15,000 per calendar year from

⁷ Prior to qualifying and registering as a multicandidate committee, the GSCC's contribution limits to non-senatorial candidates would be \$2,300 per election in the 2007-2008 election cycle and \$5,000 per calendar year to other political committees. *See* 2 U.S.C. 441a(a)(1)(A) and 11 CFR 110.1(b).

1 multicandidate political committees. *See* 2 U.S.C. 441a(a)(1)(B) and 441a(a)(2)(B);
2 11 CFR 110.1(c)(1) and 110.2(c)(1). These limits are separate and distinct from the limits
3 that apply to contributions to the GNC. *See* 11 CFR 110.3(b)(2)(ii).

4 3. *May the GSCC make coordinated party expenditures?*

5 Yes, the GSCC may make coordinated party expenditures, but only if the GNC or a
6 State committee of the Green Party assigns to the GSCC the authority to do so. *See*
7 11 CFR 109.33.

8 National and State committees of political parties may make coordinated party
9 expenditures in connection with the general election campaigns of Federal candidates. *See*
10 2 U.S.C. 441a(d); 11 CFR 109.30.⁸ Coordinated party expenditures are in addition to
11 contributions that national and State party committees may give to their candidates.
12 The national committee of a political party and any State committee of a political party
13 may assign their coordinated party expenditure authority to another political party
14 committee.⁹ *See* 11 CFR 109.33. Accordingly, the GSCC may make coordinated party
15 expenditures only if the GNC, as the national committee of the Green Party, or a State
16 committee of the Green Party, assigns to the GSCC its authority to do so. Any such
17 assignment must be in writing, stating the dollar amount of the authority assigned. *See* 11
18 CFR 109.33(a). The GSCC must receive the written assignment before it makes any
19 coordinated party expenditures. *Id.*

20

⁸ Coordinated party expenditure limits in connection with the general election campaigns of House and Senate candidates vary by State. *See* 2 U.S.C. 441a(d)(3); 11 CFR 109.32(b)(2). The limits for calendar year 2007, indexed for inflation, are available on the Commission's website, www.fec.gov.

⁹ *See FEC v. DSCC*, 454 U.S. 27 (1981) (senatorial campaign committees do not have the authority to make coordinated party expenditures under 2 U.S.C. 441a(d) unless they act as agents for the national or a State party committee).

1 4. *What reporting requirements apply to the GSCC?*

2 As a national party committee, the GSCC is required to report its receipts and
3 disbursements on a monthly basis. *See* 2 U.S.C 434(e)(1); 11 CFR 104.5(c)(4) and 105.2.
4 The Commission notes that as of its report covering October 2006, the GSCC is already
5 filing monthly. Further, as a political committee, the GSCC is subject to the other
6 reporting and filing requirements of 2 U.S.C. 434 and 11 CFR Part 104, as applicable.

7 This response constitutes an advisory opinion concerning the application of the Act
8 and Commission regulations to the specific transaction or activity set forth in your request.
9 *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the
10 facts or assumptions presented, and such facts or assumptions are material to a conclusion
11 presented in this advisory opinion, then the requestor may not rely on that conclusion as
12 support for its proposed activity.

13 All cited advisory opinions are available on the Commission's website at
14 www.fec.gov.

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Sincerely,

Robert D. Lenhard
Chairman