

AGENDA DOCUMENT NO. 10-65



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM

October 14, 2010

For Meeting of 10-21-10

MEMORANDUM

TO: The Commission

FROM: Christopher Hughey *pch*
Acting General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Amy L. Rothstein *ALR*
Assistant General Counsel

Cheryl A.F. Hemsley *ALR for CAFH*
Attorney

Subject: Draft AO 2010-22 (Working Families Party of Connecticut)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 21, 2010.

Attachment

1 ADVISORY OPINION 2010-22

2
3 Alexander Rabb, Esq.

DRAFT

4 Levy Ratner, P.C.

5 Attorneys at Law

6 80 8th Avenue, 8th Floor

7 New York, NY 10011-51216

8
9 Dear Mr. Rabb:

10
11 We are responding to your advisory opinion request regarding the status of the
12 Connecticut Working Families Federal PAC d/b/a Take Back Congress CT (the
13 “Committee”) as a State committee of a political party under the Federal Election
14 Campaign Act of 1971, as amended (the “Act”), and Commission regulations. The
15 Commission concludes that the Committee qualifies as a State committee of a political
16 party because: (1) the Connecticut Working Families Party (the “CT WFP”) qualifies as a
17 political party; (2) the CT WFP possesses an official party structure; and (3) the
18 Committee is responsible for the day-to-day operations of a political party at the State
19 level.

20 ***Background***

21 The facts presented in this advisory opinion are based on your letter received on
22 September 8, 2010, and on information disclosed to the Commission and the Connecticut
23 Secretary of State and publicly available on the Commission’s and the Connecticut
24 Secretary of State’s websites.

25 The CT WFP is not affiliated with a national political party but qualifies under
26 Connecticut law as a “minor political party.” See Letter from Theodore E. Bromley,
27 Office of Secretary of the State of Connecticut (attached to advisory opinion request)
28 (“Connecticut Secretary of State Letter”). The organizational structure of the CT WFP is

set out in the CT WFP’s Rules. *See* Working Families Party, Party Rules (the “Rules”), Arts. IV-IX. The Rules describe membership in and governance of the CT WFP. The CT WFP is governed by the Committee (referred to in the Rules as the State Committee) and an Executive Committee. *See* Rules, Arts. V and VI.

The Committee manages the CT WFP’s day-to-day activities and operation. The Committee is the CT WFP’s highest governing body, with the authority to convene meetings, allocate financial resources, establish committees, and endorse issues and candidates in the name of the CT WFP. *See* Rules, Art. V, Para. 1 and Art. VIII. The Committee elects an Executive Committee from its own members consisting of three co-chairs, a secretary, and a treasurer to carry on its work in the periods of time between Committee meetings. *See* Rules, Art. VI, Para. 1.

The CT WFP placed two candidates for the U.S. House of Representatives on the 2010 Connecticut general election ballot as candidates of the CT WFP: Representative Joe Courtney (2nd District) and Representative Rosa DeLauro (3rd District). Both Representative Courtney and Representative DeLauro will be identified on the ballot as candidates of the CT WFP.¹ Representative Courtney and Representative DeLauro have each received contributions and made expenditures in excess of \$5,000 in their respective

¹ The Commission notes that both Representative Courtney and Representative DeLauro will appear on the 2010 general election ballot as candidates of both the CT WFP and the Democratic Party. The political party identifications for Representative Courtney and Representative DeLauro on the general election ballot appears on the Connecticut’s Secretary of the State website at <http://www.stateofct.gov/StatementOfVote/WebModules/ReportsLink/CLNWRRepCongView.aspx?Parameter=11/02/2010-General> (last visited October 14, 2010).

campaigns for the U.S. House of Representatives during the current election cycle,
according to disclosure reports filed with the Commission.²

Question Presented

*Does the Committee qualify as a State committee of a political party within the
meaning of the Act and Commission regulations?*

Legal Analysis and Conclusion

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

A “State committee” of a political party is an organization that, by virtue of the
bylaws of a political party, is part of the official party structure and is responsible for the
day-to-day operation of such political party at the State level, as determined by the
Commission. 2 U.S.C. 431(15); 11 CFR 100.14(a). A “political party” is an association,
committee, or organization that nominates a candidate for election to any Federal office
whose name appears on the election ballot as the candidate of the association, committee,
or organization. 2 U.S.C. 431(16); 11 CFR 100.15.

The determination as to whether a State party organization that is not affiliated
with a national political party qualifies as a State committee of a political party turns on
three elements: (1) the State party organization must itself qualify as a “political party”;
(2) the State party organization must itself possess an official party structure; and (3) the
State party organization must be responsible for the day-to-day operations of a party at
the State level. *See, e.g.,* Advisory Opinions 2008-12 (Independent Party of Oregon) and

² Disclosure reports for Representative Courtney and Representative DeLauro appear on the Commission’s website at <http://query.nictusa.com/cgi-bin/fecimg/?C00238865> and <http://query.nictusa.com/cgi-bin/fecimg/?C00410233>, respectively (last visited September 10, 2010).

2007-23 (Independence Party of New York). The Commission addresses each of these three elements in turn.

(1) Qualification of the CT WFP as a Political Party

To qualify as a political party, the CT WFP must have at least one candidate for Federal office whose name is on the ballot as a candidate of the CT WFP. *See id.* An individual qualifies as a candidate for Federal office if the individual, the individual's authorized committee, or other persons authorized by the individual, have received contributions aggregating in excess of \$5,000 or have made expenditures aggregating in excess of \$5,000. *See* 2 U.S.C. 431(2); 11 CFR 100.3(a)(1). Representative Courtney and Representative DeLauro have each received contributions and made expenditures in excess of \$5,000 in their respective campaigns for the U.S. House of Representatives during the current election cycle; thus, both Representative Courtney and Representative DeLauro qualify as Federal candidates under the Act and Commission regulations. Additionally, both candidates will appear on the November 2010 Connecticut general election ballot as candidates of CT WFP.³ Accordingly, the CT WFP qualifies as a political party. *See* Advisory Opinions 2010-13 (Libertarian Party of Florida), 2008-12 (Independent Party of Oregon), and 2000-14 (New York State Committee of the Working Families Party). Further, a letter from the office of the Connecticut Secretary of the State evidences the CT WFP's status as a minor political party under Connecticut law. *See* Connecticut Secretary of State Letter.

³ As noted previously, both Representative Courtney and Representative DeLauro also will appear on the 2010 general election ballot as candidates of the Democratic Party. In previous advisory opinions, the Commission has concluded that a candidate's association with more than one political party is not relevant when reviewing a party's qualification for State committee status. *See, e.g.,* Advisory Opinion 2007-23 (Independence Party of New York) at n.6 and advisory opinions cited therein.

1 *(2) Official Party Structure of the CT WFP*

2 The CT WFP is not affiliated with any national political party, but such affiliation
3 is not needed to obtain State party committee status. *See, e.g.* Advisory Opinions
4 2008-12 (Independent Party of Oregon), 2007-23 (Independence Party of New York),
5 2000-21 (New York State Conservative Party), and 2000-14 (New York State Committee
6 of the Working Families Party). In cases involving a State party organization that is not
7 affiliated with a national political party, the State party organization must itself possess
8 an official party structure. *See* Advisory Opinions 2008-12 (Independent Party of
9 Oregon) and 2007-23 (Independence Party of New York). The Commission concludes
10 that the CT WFP possesses an official party structure because: (1) the CT WFP's Rules
11 establish an official party structure; (2) the CT WFP has qualified for status as a minor
12 political party under Connecticut law⁴ and, as such, has placed two candidates on its party
13 line on the 2010 general election ballot. Accordingly, the CT WFP satisfies the second
14 element required for the Committee to qualify as a State committee of a political party.

15 *(3) Responsibility of the Committee for Day-to-Day Operations of the CT WFP*

16 The third element in determining whether a State party organization is a State
17 committee of a political party is whether the organization, by virtue of its bylaws or by
18 operation of State law, is responsible for the day-to-day operations of a political party at
19 the State level. *See* 2 U.S.C. 431(15); 11 CFR 100.14(a); *see also* Advisory Opinions
20 2008-12 (Independent Party of Oregon) and 2007-23 (Independence Party of New York).

21 The Rules of the CT WFP clearly identify the role of the Committee and its
22 responsibilities for the day-to-day functions and operations of the CT WFP at the State

⁴ *See* Connecticut Secretary of State Letter.

1 level. *See* Rules, Arts. IV - IX. The Committee's responsibility for the operations of the
2 CT WFP at the State level is commensurate with the responsibility of other State party
3 committees that the Commission has previously recognized. *See, e.g.,* Advisory Opinion
4 2008-12 (Independent Party of Oregon). Thus, the Committee is responsible for the day-
5 to-day operations of a political party at the State level.

6 Because all three elements of the definition of "State committee" are satisfied, the
7 Commission determines that the Committee qualifies as a State committee of a political
8 party under the Act and Commission regulations.

9 This response constitutes an advisory opinion concerning the application of the
10 Act and Commission regulations to the specific transaction or activity set forth in your
11 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in
12 any of the facts or assumptions presented, and such facts or assumptions are material to a
13 conclusion presented in this advisory opinion, then the requester may not rely on that
14 conclusion as support for its proposed activity. Any person involved in any specific
15 transaction or activity which is indistinguishable in all its material respects from the
16 transaction or activity with respect to which this advisory opinion is rendered may rely on
17 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
18 conclusions in this advisory opinion may be affected by subsequent developments in the

1 law, including, but not limited to, statutes, regulations, advisory opinions and case law.

2 The cited advisory opinions are available on the Commission's website at

3 <http://saos.nictusa.com/saos/searchao>.

4 On behalf of the Commission,

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6

7 Matthew S. Petersen

8 Chairman