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For meeting of January 12, 2017

January 5, 2017

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
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Subject: AO 2016-23 (Socialist Workers 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 January 11, 2017.

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 <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2016-23

2

3

4 Michael Krinsky, Esq.

5 Lindsey Frank, Esq.

6 Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.

7 61 Broadway, 18th floor

8 New York, NY 10006-3791

9

DRAFT A

10 Dear Messrs. Krinsky and Frank:

11 We are responding to your advisory opinion request on behalf of the Socialist Workers
12 Party, the Socialist Workers National Campaign Committee, and committees supporting
13 candidates of the Socialist Workers Party (collectively the “SWP” or the “SWP committees”)
14 concerning the renewal of a partial reporting exemption for the SWP. The Commission
15 concludes that the public interest would be served by disclosure of SWP’s contributors and
16 vendors as required by the Federal Election Campaign Act (the “Act”), and that the SWP has not
17 demonstrated a reasonable probability that disclosing its contributors and vendors will subject
18 those persons to threats, harassment, or reprisals. Accordingly, the Commission is not renewing
19 the SWP’s partial reporting exemption.

20 **Background**

21 The facts presented in this advisory opinion are based on your advisory opinion request
22 (“AOR”) submissions received on October 31 and November 14, 2016.

23 *A. Partial Exemption History*

24 The SWP was first granted a partial reporting exemption in a consent decree that resolved
25 *Socialist Workers 1974 Nat’l Campaign Comm. v. FEC*, Civ. No. 74-1338 (D.D.C. 1979). In
26 that case, the SWP had alleged that certain disclosure provisions of the Act deprived the SWP
27 and its supporters of their First Amendment rights because of the likelihood of harassment
28 resulting from mandatory disclosure of contributors and vendors. Additionally, the SWP had

1 alleged that the governmental interest in publicizing identifying information of contributors and
2 payees was diminished because, as a minor party, the possibility of an SWP candidate winning
3 or influencing an election was remote. The consent decree exempted the SWP from the Act's
4 requirements to disclose: (1) the names, addresses, occupations, and principal places of business
5 of contributors to the SWP committees; (2) other political committees or candidates to whom the
6 SWP committees made contributions; (3) lenders, endorsers, or guarantors of loans to the SWP
7 committees; and (4) persons to whom the SWP committees made expenditures. The consent
8 decree, however, required the SWP to maintain records in accordance with the Act and to file
9 reports in a timely manner. On July 24, 1985, the court approved an updated settlement
10 agreement with these requirements and partial reporting exemption.¹

11 In 1990, the SWP sought an extension of the partial reporting exemption through the
12 advisory opinion process in lieu of obtaining a new consent decree from the court. The
13 Commission granted the same exemption provided by the previous consent decrees. The
14 advisory opinion provided that the exemption would be in effect through December 31, 1996.
15 *See* Advisory Opinion 1990-13 (SWP).

16 In response to each of the SWP's subsequent 1996, 2002, 2008, and 2012 requests, the
17 Commission issued advisory opinions renewing the partial reporting exemptions. *See* Advisory
18 Opinion 1996-46 (SWP); Advisory Opinion 2003-02 (SWP); Advisory Opinion 2009-01 (SWP);
19 Advisory Opinion 2012-38 (SWP). The current exemptions apply to activity through December
20 31, 2016.² *See* Advisory Opinion 2012-38 (SWP).

¹ The 1985 agreement also exempted the SWP from reporting the identification of persons providing rebates, refunds, or other offsets to operating expenditures, and persons providing any dividend, interest, or other receipt.

² Advisory Opinion 2012-38 (SWP) specified that no later than 60 days prior to that date, the SWP could

1 B. *Factual Update*

2 The factual basis for the SWP's prior reporting exemptions is set forth in the advisory
3 opinions granting those exemptions. *See* Advisory Opinion 2012-38 (SWP). As discussed
4 below, the SWP's current request presents facts regarding its activities since the reporting
5 exemption was last renewed in 2012.

6 1. *Electoral Success*

7 The SWP's candidate for President in 2016 achieved general election ballot access in 7
8 states and received approximately 12,000 votes.³ The SWP has not placed any candidates on the
9 ballot for the U.S. Senate or House of Representatives since 2012. AOR015, 189.

10 2. *Financial Activity*

11 Information presented in the request and in reports filed with the Commission indicates
12 that a total of 406 persons made contributions to the SWP in 2016, including 86 persons who
13 contributed over \$200. *See* AOR195-197. Reports filed with the Commission indicate that the
14 SWP received contributions totaling \$11,324 prior to the general election in 2012, *see* Socialist
15 Workers Campaign Committee, FEC Form 3X at 3 (Oct. 23, 2012),⁴ \$1277 in 2013, *see* Socialist
16 Workers National Campaign Committee, FEC Form 3X at 3 (Jan. 12, 2014),⁵ and no
17 contributions in 2014 or 2015. *See* Socialist Workers National Campaign Committee, FEC Form

submit a new advisory opinion request seeking another renewal of the partial exemption. SWP first submitted a request for an advisory opinion on October 31, 2016, and a complete request was received on November 14, 2016.

³ *See* <http://www.thegreenpapers.com/G16/President-Details.phtml?v=c&p=SWP>. The SWP's presidential nominee received in 4,114 votes in 2012. *See Official 2012 Presidential Election Results* (Jan. 17, 2013), <http://www.fec.gov/pubrec/fe2012/2012presgeresults.pdf>.

⁴ <http://docquery.fec.gov/pdf/535/12940401535/12940401535.pdf>

⁵ <http://docquery.fec.gov/pdf/761/14940022761/14940022761.pdf>.

1 3X at 3 (Jan. 19, 2015);⁶ Socialist Workers National Campaign Committee, FEC Form 3X at 3
2 (Jan. 17, 2016).⁷ As of November 28, 2016 (the close of books for the 2016 post-general
3 election report), the SWP’s total contributions for 2016 received amounted to \$82,372. *See*
4 Socialist Workers National Campaign Committee, FEC Form 3X (Dec. 7, 2016).⁸

5 *3. Harassment*

6 The SWP’s current request includes 33 exhibits attesting to 25 incidents of alleged
7 harassment or intimidation or of potential supporters stating that they feared being identified
8 with the SWP. These allegations generally fall into three categories: (1) statements regarding
9 the fear that potential SWP supporters have of being identified as SWP supporters; (2) statements
10 and materials regarding alleged hostility and harassment from government authorities and law
11 enforcement entities; and (3) statements and materials regarding alleged hostility and harassment
12 from private parties. The requestor states that this compilation of incidents “is not meant to be
13 exhaustive, as acts of intimidation and harassment against the SWP and its supporters are
14 frequent enough that they often go unreported to any central body.”

15 a. Allegations of Historical and Current Government Harassment
16 Causing Fears Among Potential SWP Supporters

17 In its request, the SWP summarizes the history of harassment and disruption by
18 government entities that lasted through the 1970s and that was the subject of lawsuits as late as

⁶ <http://docquery.fec.gov/pdf/198/15950046198/15950046198.pdf>.

⁷ <http://docquery.fec.gov/pdf/750/201601179004511750/201601179004511750.pdf>.

⁸ <http://docquery.fec.gov/pdf/106/201612079037734106/201612079037734106.pdf>.

1 the 1980s.⁹ Additionally, the SWP cites (as it did in its 2012 advisory opinion request) certain
2 government guidelines and programs for obtaining and maintaining information on U.S. citizens
3 and residents.¹⁰ The SWP does not indicate that the government has employed any of these
4 guidelines or programs in relation to the SWP, but the SWP asserts that, along with the lengthy
5 history of governmental harassment and disruption prior to 1990, these more recent
6 developments in government surveillance could cause any person interested in supporting the
7 SWP to reasonably fear that association with the SWP might subject them to government
8 surveillance and harassment. The SWP also describes more recent governmental action towards
9 groups that “engage in activism concerning issues that are also the subject of SWP activity,”
10 AOR033, but the request does not provide any information indicating that the SWP has been the
11 target of such action.

12 The SWP’s request contains eight statements by SWP candidates and campaign workers
13 relating to concerns expressed by potential SWP supporters regarding public identification with
14 the SWP. These include six statements by campaign supporters and workers describing their
15 experiences while campaigning and talking with potential supporters, selling subscriptions to

⁹ Advisory Opinion 1990-13 (SWP) described FBI investigative activities between 1941 and 1976 that included: extensive use of informants to gather information on SWP activities and on the personal lives of SWP members; warrantless electronic surveillance; surreptitious entry of SWP offices; attempts to embarrass SWP candidates and to foment strife within the SWP and between the SWP and others; and frequent interviews of employers and landlords of SWP members. The description of these activities was set out in the Final Report of the Special Master Judge Breitel in *Socialist Workers Party v. Attorney General*, 73 Civ. 3160 (TPG) (S.D.N.Y., Feb. 4, 1980) and *Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357 (S.D.N.Y. 1986); *see also* Advisory Opinion 2003-02 (SWP) n.8 for a description of FBI activities between 1941 and 1976.

¹⁰ Specifically, the SWP points to alleged relaxation in FBI guidelines concerning investigations and information-gathering relating to threats to national security; increased federal support for, and involvement in, state and local “fusion centers,” described as “a collaborative effort of 2 or more [f]ederal, [s]tate, local or tribal government agencies that combines resources, expertise, or information with the goal of maximizing the ability of such agencies to detect, prevent, investigate, apprehend and respond to criminal or terrorist activity”; an increase in government surveillance of telephone and electronic communications; and relaxed privacy safeguards. *See* AOR108, 198, 380, 409.

1 SWP's publication, the *Militant*, and working to get petition signatures. Individuals expressed
2 fear that getting involved with the SWP or placing their names and addresses on subscription
3 lists would result in scrutiny of them by governmental authorities, including immigration
4 authorities, or their being placed on a "government list," or facing adverse employment action.
5 *See* AOR757-768.

6 b. Interactions with Governmental Authorities

7 In addition to the generalized allegations of government surveillance discussed above, the
8 SWP raises three specific incidents of alleged governmental and law enforcement harassment
9 and surveillance. In the first such incident, the SWP candidate for Vice President was stopped
10 and his belongings examined by Australian immigration authorities before he could board a
11 flight to the U.S. He was again stopped and searched by TSA staff upon landing in the U.S.
12 Neither the Australian immigration authorities nor the TSA provided a reason for detaining the
13 candidate, and the information provided does not indicate whether the officials in either the U.S.
14 or Australia knew of his connection to the SWP. AOR728.

15 The other two incidents involved local law enforcement officers. In one of the incidents,
16 a police officer attempted to stop SWP canvassers by asking if they had a permit to campaign,
17 but he let them continue after he learned that they did not need a permit. AOR731. The other
18 incident occurred when residents of two apartment complexes called the police to stop an SWP
19 candidate and volunteer who were collecting ballot signatures. At both complexes, the police
20 affirmed the SWP's right to engage in campaign activity. AOR733.

21 The SWP also describes six instances when prison officials prevented inmates from
22 receiving issues of the *Militant* in one federal and three state prisons. In each instance, prison

1 officials permitted inmates to receive the *Militant* after the *Militant* challenged the officials'
2 decision. AOR594-727.

3 c. Hostility from Private Parties

4 The SWP submitted fourteen exhibits attesting to alleged incidents of harassment, threats,
5 or violence by private individuals or businesses. In one such incident, an SWP city council
6 candidate's home was burglarized, and the only item taken was a smartphone containing political
7 contacts and call records. AOR570. Another incident involved SWP's campaign headquarters
8 in Los Angeles, where the office's front window was shattered after a public event in October
9 2014. *See* AOR586. In both of these cases, police reports were filed but no arrests were made.
10 *See* AOR570, 586.

11 Two SWP supporters state that they made contributions to SWP with the understanding
12 that SWP was exempt from certain reporting obligations, and that if SWP were required to report
13 the names of its contributors, they would not contribute to SWP because they believe it would
14 negatively affect their employment. *See* AOR769-772.

15 The remainder of the exhibits describe disruption of SWP workers or candidates while
16 they were distributing SWP literature or attempting to obtain ballot petition signatures. Most of
17 these incidents involved verbal harassment or threats (*see* AOR570, 589, 592, 736-756), and one
18 incident included physical mistreatment of SWP property (*see* AOR589). In approximately half
19 of these cases, the exhibits allege that the harassment was specifically because the workers or
20 candidates were associated with the SWP or believed to be associated with communism. *See*
21 AOR570, 589, 736, 738, 744, 746, 751.

1 **Question Presented**

2 *Do the SWP, the Socialist Workers National Campaign Committee, other SWP party*
3 *committees, and authorized committees of candidates of the SWP qualify for a continuation of*
4 *their previous partial reporting exemption?*

5 **Legal Analysis and Conclusions**

6 No, the SWP committees do not qualify for a continuation of the partial reporting
7 exemption.

8 The Act requires political committees to file with the Commission reports that identify
9 individuals and other persons who make contributions over \$200 during the calendar year or
10 election cycle (depending on the type of committee), or who come within various other
11 disclosure categories. 52 U.S.C. § 30104(b)(3), (5), (6); *see also* 52 U.S.C. § 30101(13). As a
12 general matter, such disclosure “enables the electorate to make informed decisions and give
13 proper weight to different speakers and messages.” *Citizens United v. FEC*, 130 S. Ct. 876, 916
14 (2010). But the Supreme Court has held that under certain circumstances the Act’s disclosure
15 requirements are unconstitutional as applied to a minor party because the burden that such
16 disclosure might impose on the party’s exercise of its First Amendment rights outweighs the
17 government’s relatively insubstantial interest in that party’s disclosure. *Buckley v. Valeo*, 424
18 U.S. 1, 71-72 (1976). The Court recognized that “[t]hese movements are less likely to have a
19 sound financial base and thus are more vulnerable to falloffs in contributions. In some instances
20 fears of reprisal may deter contributions to the point where the movement cannot survive.” *Id.*
21 at 71. Similarly, although the disclosure provisions of the Act serve to deter corruption and the
22 appearance of corruption, “the governmental interest in disclosure is diminished when the

1 contribution in question is made to a minor party with little chance of winning an election,” or
2 where “contributions to a minor party . . . are concerned, for it is less likely that the candidate
3 will be victorious.” *Id.* at 67.

4 Because “[m]inor parties must be allowed sufficient flexibility in the proof of injury to
5 assure a fair consideration of their claim” for a reporting exemption, “[t]he evidence offered need
6 show only a reasonable probability that the compelled disclosure of a party’s contributors’ names
7 will subject them to threats, harassment, or reprisals from either Government officials or private
8 parties.” *Id.* at 74. “The proof may include, for example, specific evidence of past or present
9 harassment of members due to their associational ties, or of harassment directed against the
10 organization itself. A pattern of threats or specific manifestations of public hostility may be
11 sufficient.” *Id.*

12 A. *Public Interest in Disclosure to the Public of SWP’s Financing*

13 Pursuant to the framework described above, the Commission must first determine
14 whether the SWP continues to maintain its status as a minor party, such that the governmental
15 interest in ensuring that SWP’s financing is disclosed to the public is reduced. *See Buckley*, 424
16 U.S. at 68-74; *ProtectMarriage.com v. Bowen*, 830 F. Supp. 2d 914, 930 (E.D. Cal. 2011)
17 (noting that disclosure exception is “not for the majority, but for those groups in which the
18 government has a diminished interest”), *aff’d in part and dismissed in part*, 752 F.3d 827 (9th
19 Cir. 2014).

20 Even though the SWP has not prevailed in a partisan general election, its stature has
21 grown significantly in several ways since the Commission last considered the reporting
22 exemption. First, the SWP received more than \$80,000 in contributions during 2016. Not only

1 does this represent a sevenfold increase from the SWP's fundraising during the 2012 election
2 cycle, it also places the SWP in the top half of all active non-candidate committees in terms of
3 fundraising success.¹¹ Indeed, the SWP raised more funds than many state committees of more
4 electorally successful parties, such as the Green Party and the Libertarian Party. *See id.*

5 Second, the SWP's candidate for President, Alyson Kennedy, achieved ballot access in 7
6 states that held a combined 70 electoral votes. Ms. Kennedy had the ninth-widest ballot access
7 among the 31 presidential candidates who qualified for the ballot in at least one state.¹² Ms.
8 Kennedy received more than 12,000 votes, which ranked 11th out of the 31 presidential
9 candidates,¹³ and which was nearly triple the 4,100 votes the SWP's candidate received in 2012.
10 The SWP's ability to draw this quantity of votes increases the public interest in disclosure of its
11 finances: "[A] minor party sometimes can play a significant role in an election. Even when a
12 minor-party candidate has little or no chance of winning, he may be encouraged by major-party
13 interests in order to divert votes from other major-party contenders." *Buckley*, 424 U.S. at 70;
14 *see, e.g., United States v. Goland*, 959 F.2d 1449 (9th Cir. 1992) (affirming conviction for
15 excessive contribution made to third-party candidate in attempt to benefit Democratic candidate
16 by drawing support away from Republican candidate in close race); Carla Marinucci, *GOP*
17 *Donors Funding Nader/Bush Supporters Give Independent's Bid a Financial Lift*, S.F. CHRON.,
18 July 9, 2004.¹⁴

¹¹ Data available at http://www.fec.gov/data/CommitteeSummary.do?format=html&election_yr=2016.

¹² *See* <http://www.thegreenpapers.com/G16/President-Details.phtml?v=c&p=SWP>.

¹³ *See id.*

¹⁴ Available at <http://www.sfgate.com/politics/article/GOP-donors-funding-Nader-Bush-supporters-give-2708705.php>

1 Finally, while not associated with the SWP specifically, the Commission notes that 2016
2 presidential candidate Senator Bernard Sanders raised over \$231,800,000¹⁵ and received more
3 than 13 million votes (approximately 43% of the total) in the Democratic Party presidential
4 primaries.¹⁶ Senator Sanders is widely known to have adopted the “Socialist” label during his
5 tenure as an elected official. *See, e.g.*, John Dillon, Exactly What Kind Of Socialist Is Bernie
6 Sanders?, NPR, Aug. 27, 2015 (“[S]ocialist’ is now how Vermont Sen. Bernie Sanders has
7 described himself throughout his career. Sanders has not run from the term, even as he surges in
8 his race for president.”).¹⁷ Similarly, there is evidence that voters themselves self-identified as
9 Socialists in significant numbers in 2016. *See* John McCormick and Arit John, Anti-Wall Street
10 Sentiment Breaks by Party Line in Iowa Poll, BLOOMBERG, Jan. 15, 2016 (43% of Democrats
11 who planned to attend 2016 Iowa caucuses described themselves as Socialists);¹⁸ James Pindell,
12 New Globe Poll Shows Rubio Closing in on Trump in N.H., BOSTON GLOBE, Feb. 5, 2016 (31%
13 of likely Democratic voters in New Hampshire called themselves Socialists).¹⁹ The ability of
14 such a candidate to garner substantial electoral support and the numbers of voters identifying as
15 Socialists calls into question the SWP’s qualification for a reporting exemption. *See Doe v.*
16 *Reed*, 823 F. Supp. 2d 1195, 1203-04 (W.D. Wash. 2011) (distinguishing group that “rais[ed]

¹⁵ *See* Bernie 2016, FEC Form 3P (Oct. 27, 2016),
<http://docquery.fec.gov/pdf/855/201610279036940855/201610279036940855.pdf>.

¹⁶ *See* <http://www.thegreenpapers.com/P16/D>.

¹⁷ Available at <http://www.npr.org/sections/itsallpolitics/2015/08/27/434872755/exactly-what-kind-of-socialist-is-bernie-sanders>.

¹⁸ Available at <https://www.bloomberg.com/politics/articles/2016-01-15/anti-wall-street-sentiment-breaks-by-party-line-in-iowa-poll>.

¹⁹ Available at <https://www.bostonglobe.com/news/politics/2016/02/05/new-poll-shows-rubio-closing-trump/QpALGuCZ2gAivxLtHAaPAI/story.html>.

1 nearly \$30 million, securing 52.3% of the vote,” from disclosure-exempt organizations such as
2 NAACP in 1950s and SWP in 1970s), *appeal dismissed on other grounds*, 697 F.3d 1235 (9th
3 Cir. 2012).

4 Accordingly, considering the SWP’s achievements in fundraising and ballot access, as
5 well as the electoral success of a candidate with a party identification materially similar to the
6 party at issue here, the Commission concludes that the public interest in disclosure of SWP’s
7 financing is significantly greater than it has been at any other time that the Commission
8 considered the SWP’s reporting exemption.

9 *B. Probability of Threats, Harassment, and Reprisals*

10 Next, the Commission must assess the probability that persons associated with the SWP
11 would be subject to threats, harassment, and reprisal if their identities were disclosed. The
12 Commission assesses this probability by examining instances of threats, harassment, and
13 reprisals directed at the SWP or its supporters, both historically and since the most recent
14 reporting exemption was granted.

15 As explained above and in prior advisory opinions, there is a long history of threats,
16 harassment, and reprisals against the SWP and its supporters by government agencies and private
17 parties. Courts have detailed “the substantial evidence of both governmental and private hostility
18 toward and harassment of SWP members and supporters,” *Brown v. Socialist Workers ’74*
19 *Campaign Committee (Ohio)*, 459 U.S. 87, 98-99 (1982) (internal quotation marks omitted),
20 such as “massive” FBI surveillance, *id.* at 99. *See also Socialist Workers Party v. Attorney*
21 *General*, 642 F. Supp. 1357 (S.D.N.Y. 1986); *Socialist Workers Party v. Attorney General*, 666
22 F. Supp. 621 (S.D.N.Y. 1987). Similarly, in its prior advisory opinion requests, the SWP has

1 provided the Commission with accounts of serious incidents of harassment by private parties
2 over the last several decades. *See* Advisory Opinion 1990-13 (SWP); Advisory Opinion 1996-46
3 (SWP); Advisory Opinion 2003-02 (SWP); Advisory Opinion 2009-01 (SWP). The Commission
4 once again recognizes the historical pattern of previous actions against the SWP as a factor
5 weighing in favor of renewing the partial reporting exemption, as this history may discourage
6 individuals from getting involved with the SWP for fear of harassment or surveillance by
7 government agencies. *See, e.g.*, Advisory Opinion 2009-01 (SWP); Advisory Opinion 2003-02
8 (SWP).

9 The Commission notes, however, that the court cases cited above are 30 years old, and as
10 the acts and incidents that they document recede further into the past, their relevance to assessing
11 the probability of the SWP suffering harassment today diminishes. In the advisory opinions as
12 well, the documented instances of harassment have steadily decreased in both quantity and
13 severity. *See* Advisory Opinion 2012-38 (SWP) (quoting Advisory Opinion 2009-01 (SWP)
14 (describing alleged incidents of violence and harassment from 2003-2008 as “appear[ing] to be
15 of lesser magnitude than those referenced in court opinions and prior AOs granting the
16 exemption”).

17 It is against this backdrop that the more recent evidence presented by the requestors must
18 be considered. *See Brown*, 459 U.S. at 98 (holding that district court “properly applied the
19 *Buckley* test” in finding that there was “proof of specific incidents of private and government
20 hostility toward the SWP and its members within the four years preceding the trial”); *see also*
21 *FEC v. Hall-Tyner*, 678 F.2d 416, 422 (2d Cir. 1982) (citing government admission that

1 Communist Party seeking reporting exemption remained under “active investigation by the FBI”
2 despite termination of prior surveillance program).

3 For the period during which the most recent reporting exemption was in effect (January
4 2013 through December 2016), the SWP’s primary allegation of government harassment is that
5 the SWP’s 2016 vice presidential candidate was stopped and his belongings examined by
6 Australian immigration authorities before he could board a flight to the U.S. The request states
7 that he was again stopped and searched by TSA staff upon landing in the U.S. Neither the
8 Australian immigration authorities nor the TSA provided a reason for detaining the candidate,
9 and the information submitted does not indicate whether the officials in either country even knew
10 of his connection to the SWP. *See* AOR728. Without additional information regarding the
11 reason for these delays and searches, this incident is difficult to assess. *See* Advisory Opinion
12 2012-38 (SWP) (concluding that uncorroborated claim that SWP vice presidential candidate was
13 stopped at Canadian border and questioned by Canadian immigration authorities who had
14 “sizeable dossier” on him was difficult to assess and noting that it was possible that information
15 was gathered by Canadian government); Advisory Opinion 1996-46 (SWP) (noting that SWP
16 provided uncorroborated claim that man associated with SWP was on no-fly list and had been
17 questioned by FBI before being permitted to board flight). No other evidence of government
18 surveillance of the SWP is provided in the current request.

19 The SWP does submit evidence regarding government surveillance of certain other
20 domestic advocacy groups. The SWP points to a September 2010 report by the Department of
21 Justice’s Inspector General regarding surveillance of groups such as People for the Ethical
22 Treatment of Animals, Greenpeace, the Catholic Worker Movement, and the Thomas Merton

1 Center, as well as other sources purporting to demonstrate government surveillance of additional
2 groups, including more recent studies and news articles.²⁰ But neither the request nor the cited
3 reports suggest that the SWP has recently been under surveillance or otherwise interfered with by
4 the federal government. Surveillance of groups *other* than the SWP provides little support for
5 the probability of future government harassment of the SWP. Although the Court suggested in
6 *Buckley* that “[n]ew parties that have no history upon which to draw may be able to offer
7 evidence of reprisals and threats directed against individuals or organizations holding similar
8 views,” 424 U.S. at 74, the SWP is not a new party that would need to resort to citing the
9 experiences of others for evidence of likely reprisals. Thus, even assuming that the groups
10 described in the cited reports could be construed as ideologically similar to the SWP, the Court’s
11 rationale for considering evidence of threats against groups with similar views is not applicable
12 to the SWP.

13 The SWP also submits evidence regarding a few incidents of police officers being called
14 by residents when SWP workers were canvassing at apartment complexes. In each incident, the
15 officers affirmed that the workers had the right to be engaging in campaign activity. These
16 cannot be considered instances of government harassment; to the contrary, they demonstrate a
17 willingness of law enforcement officials to protect the SWP’s lawful activity against frivolous
18 complaints. *See Doe v. Reed*, 697 F.3d 1235, 1249 (9th Cir. 2012) (Smith, J., concurring)
19 (evidence of retaliation not persuasive when it showed “satisfactory aid from law enforcement,”
20 which stood “in stark contrast to the behavior of police in *Brown v. Socialist Workers* ’74

²⁰ See, e.g., AOR108, 198, 380.

1 *Campaign Committee*, where there was . . . police harassment of a party candidate”) (citations
2 omitted).

3 Regarding threats, harassment, and reprisals by non-government actors, the SWP submits
4 evidence of fewer and less serious incidents than it has in the past. For example, the SWP
5 presents evidence that two people stated that they were afraid that associating with the SWP
6 would impact their employment. AOR768, 771. While the Commission does not trivialize such
7 fears, the Commission notes that two references to hypothetical adverse employment actions pale
8 in comparison to the evidence that was before the Supreme Court in *Brown* regarding the
9 employment consequences for SWP members in the 1970s. *See, e.g., Brown*, 459 U.S. at 99
10 (“[I]n the 12-month period before trial, 22 SWP members . . . were fired because of their party
11 membership.”). Similarly, in its previous advisory opinion requests, the SWP has provided the
12 Commission with accounts of serious and widespread physical incidents, including a brick
13 wrapped in incendiary material thrown through the window of a local SWP headquarters, a shot
14 fired through the window of an SWP bookstore and campaign headquarters of an SWP mayoral
15 candidate, and widespread vandalism to SWP property. *See* Advisory Opinion 2009-01 (SWP)
16 at 7; Advisory Opinion 2003-02 (SWP) at 7; Advisory Opinion 1996-46 (SWP) at 5. In this
17 request, SWP submits two alleged physical incidents: The theft from an SWP city council
18 candidate’s home of a smartphone containing political contacts and call records, *see* AOR570,
19 and the breaking of the front window of the SWP’s campaign headquarters in Los Angeles. *See*
20 AOR586. In both cases, police reports were filed but no arrests were made. *See* AOR570, 586,
21 589.

1 Many of the SWP’s alleged incidents merely involve private parties expressing heated
2 disagreement with the SWP’s positions. Such episodes are “typical of any controversial
3 campaign,” and “do not necessarily rise to the level of ‘harassment’ or ‘reprisals.’”
4 *ProtectMarriage.com*, 830 F. Supp. 2d at 934. And because there is no evidence that SWP
5 workers called the local police for assistance during these encounters, the Commission is unable
6 to find that they demonstrate that the SWP “lacks adequate recourse to pursue means short of
7 non-disclosure” to protect against any unlawful interference with its campaigning.
8 *ProtectMarriage.com*, 830 F. Supp. 2d at 932.

9 In short, the recent evidence submitted does not indicate a reasonable probability that
10 serious harassment and reprisals are likely to be inflicted on SWP supporters. In light of the
11 increasingly distant history of government surveillance and harassment of the SWP, the lack of
12 more recent indications of such surveillance and harassment, and the substantial decline in
13 private harassment of the SWP through the time periods considered in Advisory Opinion 2009-
14 01 (SWP) and Advisory Opinion 2012-38 (SWP), the factual record before the Commission
15 provides relatively little support for the SWP’s current request for a prospective partial reporting
16 exemption.

17 C. *Balancing the Public Interest in Disclosure Against the Probability of Threats,*
18 *Harassment, and Reprisals*

19 The SWP has been subject in the past to serious and widespread threats, harassment, and
20 reprisals from both government and private parties. As described above, however, the
21 probability of adverse action against the SWP is significantly lower than it was at any previous
22 time the Commission has considered this issue, and the public interest in disclosure of SWP’s

1 financing is greater.²¹ The SWP’s ability to raise more than \$80,000 during 2016, together with
2 SWP’s success in obtaining ballot access and the votes cast for SWP- and Socialist-affiliated
3 candidates, appears to show that the SWP is able to raise funds and disseminate its message in
4 spite of isolated instances of harassment. It is therefore increasingly difficult for the
5 Commission to conclude that the SWP’s “financial backing is so tenuous as to render [it]
6 susceptible to a . . . speculative fall-off in contributions” if the SWP’s contributors are disclosed.
7 *ProtectMarriage.com*, 830 F. Supp. 2d at 929.

8 Viewing the SWP’s circumstances and evidence as a whole — including the historical
9 persecution of the group, the relative paucity of recent episodes of serious harassment, and the
10 SWP’s increasing level of electoral and financial success — the Commission concludes that the
11 reduced probability of meaningful threats, harassment, and reprisals against the SWP is no
12 longer sufficient to outweigh the public interest in disclosure of the SWP’s activity. *See Doe v.*
13 *Reed*, 697 F.3d at 1248 (Smith, J., concurring) (plaintiffs did not demonstrate infringement of
14 associational rights or “‘the particularized showing required by Supreme Court precedent’ that
15 disclosure . . . is reasonably likely to result in . . . retaliation”) (quoting *Family PAC v.*
16 *McKenna*, 685 F.3d 800, 808 (9th Cir. 2012)); *ProtectMarriage.com v. Bowen*, 599 F. Supp. 2d
17 1997, 1216 (E.D. Cal. 2009) (plaintiffs did not demonstrate that they had “suffered animosity
18 rising to the level hypothesized in *Buckley* and existing in *Brown*”). The Commission thus
19 concludes that the SWP no longer qualifies for the partial disclosure exemption.

²¹ Indeed, some of the SWP’s evidence demonstrates that the alleged hostility is not meaningfully hindering the SWP’s activities. For example, the SWP submits a news article quoting an SWP mayoral candidate in Omaha who stated that the SWP was able to collect “more than two times the required number [1,000] of signatures” to gain ballot access in Omaha. AOR570. “[The SWP] got a great political response” and “sold hundreds of copies of the *Militant*” and sold several subscriptions to that periodical as well while gathering signatures. *Id.*

