

PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS

Members of the public may submit written comments on draft advisory opinions.

DRAFT ADVISORY OPINION 2012-39 is now available for comment. It was requested by Audrey Clement, Ph.D., on behalf of the Green Party of Virginia, and is scheduled to be considered by the Commission at its public meeting on January 31, 2013. The meeting will begin at 10:00 a.m. and will be held in the 9th Floor Hearing Room at the Federal Election Commission, 999 E Street, NW, Washington, DC. Individuals who plan to attend the public meeting and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Commission Secretary, at (202) 694-1040, at least 72 hours prior to the meeting date.

If you wish to comment on DRAFT ADVISORY OPINION 2012-39, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by noon (Eastern Time) on January 30, 2013.
- 4) The Commission will generally not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

REQUESTOR APPEARANCES BEFORE THE COMMISSION

The Commission has implemented a pilot program to allow advisory opinion requestors, or their counsel, to appear before the Commission to answer questions at the open meeting at which the Commission considers the draft advisory opinion. This program took effect on July 7, 2009.

Under the program:

- 1) A requestor has an automatic right to appear before the Commission if any public draft of the advisory opinion is made available to the requestor or requestor's counsel less than one week before the public meeting at which the advisory opinion request will be considered. Under these circumstances, no advance written notice of intent to appear is required. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).
- 2) A requestor must provide written notice of intent to appear before the Commission if all public drafts of the advisory opinion are made available to requestor or requestor's counsel at least one week before the public meeting at which the Commission will consider the advisory opinion request. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2). The notice of intent to appear must be received by the Office of the Commission Secretary by hand delivery, email (Secretary@fec.gov), or fax ((202) 208-3333), no later than 48 hours before the scheduled public meeting. Requestors are responsible for ensuring that the Office of the Commission Secretary receives timely notice.
- 3) Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the Commission's technical capabilities.
- 4) Requestors or their counsel who appear before the Commission may do so only for the limited purpose of addressing questions raised by the Commission at the public meeting. Their appearance does not guarantee that any questions will be asked.

FOR FURTHER INFORMATION

Press inquiries: Judith Ingram
Press Officer
(202) 694-1220

Commission Secretary: Shawn Woodhead Werth
(202) 694-1040

Comment Submission Procedure: Kevin Deeley
Acting Associate General Counsel
(202) 694-1650

Other inquiries:

To obtain copies of documents related to Advisory Opinion 2012-39, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

ADDRESSES

Office of the Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Office of General Counsel
ATTN: Kevin Deeley, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

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Washington, DC 20463

January 24, 2013

MEMORANDUM

AGENDA ITEM

TO: The Commission

FROM: Anthony Herman
General Counsel

Kevin Deeley *RD*
Acting Associate General Counsel

Amy Rothstein *AR*
Assistant General Counsel

Cheryl Hemsley *CH*
Attorney

For Meeting of 1-31-13

Subject: Draft AO 2012-39 (Green Party of Virginia)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the Open Session agenda for January 31, 2013.

Attachment

1 ADVISORY OPINION 2012-39

2

3 Audrey Clement, Ph.D
4 Co-Chair, Green Party of Virginia
5 Green Party of Virginia
6 P. O. Box 7316
7 Falls Church, VA 22040

DRAFT

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9 Dear Ms. Clement:

10 We are responding to your inquiry regarding the status of the Green Party of
11 Virginia as a State committee of a political party under the Federal Election Campaign
12 Act of 1971, as amended (the "Act"), and Commission regulations. The Commission
13 concludes that the Green Party of Virginia is a State committee of a political party
14 because: (1) the Green Party of the United States is a political party; (2) the Green Party
15 of Virginia is part of the official structure of the Green Party of the United States; and
16 (3) the Green Party of Virginia is responsible for the day-to-day operations of the Green
17 Party of the United States at the State level.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on
20 December 14, 2012 and other publicly available information.

21 The Green Party of Virginia is a political committee that is registered with, and
22 reports to, the Commission. In 2001, a representative of the Green Party of Virginia
23 executed on its behalf a document entitled, "Official Affiliation Agreement between the
24 Green Party of Virginia and the Green Party of the United States" ("Affiliation
25 Agreement"). In it, the Green Party of Virginia agreed to affiliate with, and abide by the
26 bylaws of, the Green Party of the United States; to elect delegates from Virginia to
27 represent it on the Coordinating Committee of the Green Party of the United States; to

1 use its best efforts to support ballot access for national candidates nominated by the
2 Green Party of the United States; and to nominate candidates for State, local and Federal
3 election. More recently, the Secretary of the Green Party of the United States confirmed
4 that the Green Party of Virginia is an affiliate of the Green Party of the United States.
5 See Letter To Whom It May Concern, from William Dickinson, Secretary, Green Party of
6 the United States (Dec. 3, 2012) (“Dickinson Letter”). The Commission has recognized
7 the Green Party of the United States as a “political party” since 2001. See Advisory
8 Opinion 2001-13 (Green Party of the United States).

9 In its bylaws, the Green Party of Virginia states that it “shares kinship, common
10 goals and values with other Green Parties and Green organizations.” Bylaws of the
11 Green Party of Virginia (updated Sept. 16, 2012) (“Bylaws”), Art. I. The Bylaws
12 (1) provide for the election of officers¹ and describe their specific responsibilities, *id.*,
13 Art. XIV; (2) detail the organization’s purpose, political practices, relationship with local
14 Green party organizations, and membership practices, *id.*, Arts. III, IV, VI, VII;
15 (3) describe how organizational decisions are made, reviewed, and overturned, *id.*, Arts.
16 VIII, IX, X; and (4) provide for the nomination and endorsement of candidates for local,
17 regional, State, and Federal office, *id.*, Art. XI.

18 The Bylaws also establish a number of committees to assist the Green Party of
19 Virginia in operating and complying with State law. The Interim Committee is
20 responsible for conducting the organization’s day-to-day business, making decisions on
21 matters that “cannot reasonably be put off” until the next meeting of the Green Party of

¹ These officers are two Co-Chairs, Press Secretary, Treasurer, and Webmaster.

1 Virginia, issuing statements on behalf of the organization, and hiring and overseeing the
2 activities of staff. *Id.*, Art. XVII. The Central Committee is responsible for certifying
3 nominations. *Id.*, XVI. The Bylaws also provide for the establishment of standing
4 committees by the organization's membership. *Id.*, Art. XVIII.

5 The Green Party of Virginia placed a candidate for President, Ms. Jill Stein, and a
6 candidate for the U.S. House of Representatives, Mr. Joe Galdo, Jr., on the 2012 general
7 election ballot in Virginia. Each candidate raised more than \$5,000 for the general
8 election.

9 ***Question Presented***

10 *Is the Green Party of Virginia a State committee of a political party within the*
11 *meaning of the Act and Commission regulations?*

12 ***Legal Analysis and Conclusion***

13 Yes, the Green Party of Virginia is a State committee of a political party within
14 the meaning of the Act and Commission regulations.

15 A "State committee" is an organization that, by virtue of the bylaws of a "political
16 party," is part of the official party structure, and is responsible for the day-to-day
17 operations of the political party at the State level. 2 U.S.C. 431(15); 11 CFR 100.14(a).

18 A "political party" is an "association, committee, or organization that nominates a
19 candidate for election to any Federal office whose name appears on the election ballot as
20 the candidate of such association, committee, or organization." 2 U.S.C. 431(16);

21 11 CFR 100.15.

1 The determination as to whether a State party organization qualifies as a State
2 committee of a national political party turns on three elements: (1) the national party with
3 which the State party organization is associated must be a “political party”; (2) the State
4 party organization must be part of the official structure of the national party; and (3) the
5 State party organization must be responsible for the day-to-day operations of the national
6 party at the State level. *See, e.g.,* Advisory Opinion 2012-36 (Green Party of
7 Connecticut); Advisory Opinion 2009-16 (Libertarian Party of Ohio); Advisory Opinion
8 2008-13 (Pacific Green Party of Oregon). The Commission addresses each of these
9 elements in turn.

10 ***(1) Qualification of Green Party of the United States as a Political Party***

11 First, the Commission must assess whether the national party qualifies as a
12 “political party” under the Act and Commission regulations. *See* 2 U.S.C. 431(15), (16);
13 11 CFR 100.14, 100.15; Advisory Opinion 2012-36 (Green Party of Connecticut);
14 Advisory Opinion 2008-16 (Libertarian Party of Colorado); Advisory Opinion 2008-13
15 (Pacific Green Party of Oregon).

16 The Commission has previously concluded that the Green Party of the United
17 States is a political party. *See* Advisory Opinion 2001-13 (Green Party of the United
18 States). The Commission is aware of no new facts that would alter that conclusion.

19 ***(2) Status of Green Party of Virginia as Part of Official Structure of the Green Party***
20 ***of the United States***

21 Second, the Green Party of Virginia must qualify as part of the official party
22 structure of the national party, pursuant to 11 CFR 100.14. Under the July 2001

1 Affiliation Agreement, the Green Party of Virginia agreed, through its representative, to
2 affiliate with, and abide by the bylaws of, the Green Party of the United States; to elect
3 delegates from Virginia to represent it on the Coordinating Committee of the Green Party
4 of the United States; to use its best efforts to support ballot access for national candidates
5 nominated by the Green Party of the United States; and to nominate candidates for State,
6 local, and Federal election. The Bylaws also provide that the Green Party of Virginia
7 may join or affiliate with regional, national, and global “Green organizations”; may send
8 delegates to these organizations; and will endorse and support only those national
9 candidates selected by the Green Party nominating convention. Bylaws, Art. V. In
10 addition, the Dickinson Letter confirms the Green Party of Virginia’s status as an affiliate
11 of the Green Party of the United States. The Commission thus concludes that the Green
12 Party of Virginia is part of the official structure of the Green Party of the United States.
13 *See Advisory Opinion 2012-36 (Green Party of Connecticut).*

14 *(3) Responsibility of Green Party of Virginia for Day-to-Day Operations of Green*
15 *Party of the United States in Virginia*

16 Third, the Green Party of Virginia must maintain responsibility for the day-to-day
17 operations of the Green Party of the United States at the State level. 2 U.S.C. 431(15);
18 11 CFR 100.14. The Commission evaluates this third element by considering:
19 (a) whether the organization has placed a “candidate” on the ballot (thereby qualifying as
20 a “political party”); and (b) whether the bylaws or other governing documents of the State
21 party organization indicate activity commensurate with the day-to-day functions and
22 operations of a political party at the State level. *See Advisory Opinion 2012-36 (Green*

1 Party of Connecticut); Advisory Opinion 2008-16 (Libertarian Party of Colorado);

2 Advisory Opinion 2008-13 (Pacific Green Party of Oregon).

3 Ballot placement on behalf of a candidate is required because the requesting
4 organization's existence as a political party is necessary for State committee status. A
5 State party organization must actually obtain ballot access for one or more "candidates,"
6 as defined in the Act. *See* 2 U.S.C. 431(2), (15), (16); 11 CFR 100.3(a), 100.14(a),
7 100.15; *see also* Advisory Opinion 2012-36 (Green Party of Connecticut); Advisory
8 Opinion 2009-16 (Libertarian Party of Ohio).

9 In this instance, the Green Party of Virginia successfully placed two candidates on
10 the State ballot in 2012: Ms. Jill Stein, candidate for President, and Mr. Joe F. Galdo, Jr.,
11 candidate for the U.S. House of Representatives. Each individual received contributions
12 in excess of \$5,000, thus qualifying as a "candidate" under the Act and Commission
13 regulations. *See* 2 U.S.C. 431(2); 11 CFR 100.3(a). Accordingly, the Green Party of
14 Virginia is a "political party" under the Act.

15 The Bylaws indicate activity commensurate with the day-to-day functions and
16 operations of a political party at the State level. They establish the organizational
17 structure of the Green Party of Virginia and describe the election process for, and
18 responsibilities of, party officers. They also establish a Central Committee to certify
19 approved nominations, Bylaws, Art. XVI, an Interim Committee to handle the day-to-day
20 administrative functions of the Green Party of Virginia, *id.*, Art. XVII, and standing
21 committees to handle finances, bylaws and procedures, platform, issue advocacy and

1 candidate exploration, and other party functions.² The Bylaws are consistent with the
2 State party rules reviewed in previous situations in which the Commission has recognized
3 the State committee status of a political organization. *See, e.g.*, Advisory Opinion
4 2012-36 (Green Party of Connecticut); Advisory Opinion 2009-16 (Libertarian Party of
5 Ohio). Therefore, the Bylaws satisfy the requirements of 2 U.S.C. 431(15) and 11 CFR
6 100.14(a).

7 Accordingly, because all three elements of the definition of “State committee” are
8 satisfied, the Commission determines that the Green Party of Virginia qualifies as a State
9 committee of a political party under the Act and Commission regulations.

10 This response constitutes an advisory opinion concerning the application of the
11 Act and Commission regulations to the specific transaction or activity set forth in your
12 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
13 of the facts or assumptions presented, and such facts or assumptions are material to a
14 conclusion presented in this advisory opinion, then the requestor may not rely on that
15 conclusion as support for its proposed activity. Any person involved in any specific
16 transaction or activity which is indistinguishable in all its material aspects from the
17 transaction or activity with respect to which this advisory opinion is rendered may rely on
18 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
19 conclusions in this advisory opinion may be affected by subsequent developments in the
20

² *See* www.vagreenparty.org (last visited January 10, 2013).

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, or directly from
3 the Commission's Advisory Opinion searchable database at <http://www.fec.gov/searchao>.

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On behalf of the Commission,

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Ellen L. Weintraub

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Chair