

AOR 2012-38

RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN, P.C.

ATTORNEYS AT LAW
45 BROADWAY, SUITE 1700
NEW YORK, NY 10006-3791

TELEPHONE (212) 254-1111
FACSIMILE (212) 874-4814
www.rbskl.com

VICTOR RABINOWITZ (1911-2007)
LEONARD B. BOUDIN (1912-1989)

MICHAEL KRINSKY
ERIC M. LIEBERMAN
DAVID B. GOLDSTEIN
CHRISTOPHER J. KLATELL

LINDSEY FRANK
DANIEL S. REICH

COUNSEL

TERRY GROSS
CRAIG KAPLAN

November 7, 2012

By Federal Express

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, DC 20463

Dear Commissioners:

On behalf of our clients, the Socialist Workers Party, the Socialist Workers National Campaign Committee, and committees supporting candidates of the Socialist Workers Party, we hereby request an advisory opinion pursuant to 2 U.S.C. § 437f and 11 C.F.R. § 112.1 that the Socialist Workers Party and the committees supporting candidates of the Socialist Workers Party (hereinafter collectively, for convenience, "SWP"), continue to be entitled to the same exemptions from reporting and disclosure requirements of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, *et seq.* granted by the FEC in its 2009 Advisory Opinion, as well as to exemptions from any new, post-2008 reporting and disclosure requirements that might otherwise be applicable.

In its 2009 Advisory Opinion, 2009-01 (hereinafter “2009 AO”), the Commission granted exemption from the FECA’s provisions requiring, *inter alia*, disclosure of the names and residential addresses, occupations, and employers of contributors to SWP committees (§ 434(b)(3)(A)); political, authorized, or affiliated committees making contributions or transfers to the reporting committee (§ 434(b)(3)(B), (C), (D)); lenders, guarantors, or endorsers of loans to the reporting committee (§ 434(b)(3)(E)); persons providing rebates, refunds, or other offsets to operating expenditures to the reporting committee (§ 434(b)(3)(F)); persons providing any dividend, interest, or other receipt to the reporting committee (§ 434(b)(3)(G)); and persons to whom expenditures, loans, loan repayments, disbursements, or contribution refunds or other offsets or committees to which expenditures, transfers, contributions, disbursements, or loans have been made (§ 434(b)(5),(6)); of receipts and disbursements by political committees (§ 434(e)); electioneering communication disclosure (§ 434(f)); and independent expenditure reporting (§ 434(g)). 2009 AO at 12.

The Commission has continuously granted these and comparable exemptions to the SWP’s campaign committees since 1979. Copies of the Commission’s 2009 Advisory Opinion (downloaded from the FEC web site), its 2003 Advisory Opinion (downloaded from the FEC web site) (hereinafter, “2003 AO”), and its 1996 Advisory Opinion (downloaded from the FEC web site) (hereinafter, “1996 AO”) are attached as Exhibits A, B, and C, respectively, to this letter request for the Commission’s convenience.

The SWP’s showing here is comparable to its showing in its prior FEC exemption requests and, therefore, requires renewal of the SWP’s exemptions for the same reasons found

compelling by the FEC in its prior opinions. As with the SWP’s prior submissions, the instant submission addresses the following:

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I. **Applicable Law and Prior Determinations**

A. The Instant Request Is Timely

The 2009 Opinion granted exemptions to the SWP through December 31, 2012. *2009 AO* at 10. It further provided that:

[a]t least sixty days prior to December 31, 2012, the SWP may submit a new advisory opinion request seeking a renewal of the exemption. If a request is submitted, the Commission will consider the factual information then presented as to harassment after December 31, 2008, or the lack thereof, and will make a decision at that time as to the renewal.

Id. at 13 (emphasis added). By email dated October 31, 2012, the Commission granted the SWP an extension until November 8, 2012 for submitting an advisory opinion request seeking a renewal of the exemption. *See Exhibit Z.* Therefore, this request is timely filed.

B. The Commission's Previous Advisory Opinions Exempting the SWP

An exemption from the FECA reporting requirements for the SWP was first provided under a 1979 consent decree, which resolved *Socialist Workers 1974 National Campaign Committee v. Federal Election Commission*, Civ. A. No. 74-1338 (D.D.C.). The consent decree “exempted [the committees from the provisions requiring the] disclosure of: 1) the names, addresses, occupations, and principal places of business of contributors to SWP committees; 2) political committees or candidates supported by SWP committees; 3) lenders, endorsers or guarantors of loans to the SWP committees; and 4) persons to whom the SWP committees made expenditures.” *2009 AO* at 2.

The exemptions were renewed in an updated settlement agreement approved by the court on July 24, 1985, and in an advisory opinion issued by the Commission in 1990. The 1990

advisory opinion “granted the same exemption provided for in the previous consent decrees,” *2003 AO* at 2, as did the 1996 Opinion, the 2003 Opinion, and the 2009 Opinion. *1996 AO* at 9 (“[t]he Commission...grants the committees supporting the candidates of the SWP the exemption provided for in the consent agreements and in Advisory Opinion 1990-13.”); *2003 AO* at 10 (“the Commission grants the SWP and the committees supporting SWP candidates a further continuation of the partial reporting exemption provided for in the consent agreements as continued by Advisory Opinions 1990-13, and 1996-46.”); *2009 AO* at 11 (“the Commission grants the SWP, the SWP’s National Campaign Committee, the SWP’s other party committees, and the authorized committees of SWP candidates a further continuation of the partial reporting exemption provided for in the consent agreements and continued in previous advisory opinions.”). Specifically, the SWP was exempted from filing “[r]eports that identify individuals and other persons who make contributions over \$200, or who come within various other disclosure categories listed above in reference to the consent agreements.” *1996 AO* at 2, citing 2 U.S.C. §§ 434(b)(3), 434(b)(5), and 434(b)(6).

In its 1996 Advisory Opinion, the Commission imposed a requirement that “each committee entitled to the exemption should assign a code number to each individual or entity from whom it receives in aggregate in excess of \$200 in a calendar year” and should include that code number in its FEC filings. *1996 AO* at 7. In its 2003 and 2009 Advisory Opinions, the Commission did the same. *2003 AO* at 10 & n.9; *2009 AO* at 11-12 & n.13.

The showing made here requires renewal of the SWP’s exemptions for the same reasons found compelling by the FEC in its prior opinions.

C. The SWP's Post-2008 State and Local Exemptions Support the Instant Request

Support for the instant request is provided by city and state election authorities' post-2008 acknowledgment of SWP's exemption from local reporting and disclosure requirements whenever the SWP has run a candidate and there were applicable reporting requirements.

In addition to the candidates for federal office, since 2008, the SWP has run candidates for local and statewide offices in the states of California, Florida, Georgia, Illinois, Iowa, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Pennsylvania, and Texas, and the municipalities of Atlanta, Georgia; Boston, Massachusetts; Des Moines, Iowa; Houston, Texas; Los Angeles, California; Miami, Florida; Newark, New Jersey; New York, New York; Philadelphia, Pennsylvania; Minneapolis, Minnesota; San Francisco, California; Seattle, Washington; and Washington, D.C. Ex. D.

D. Constitutional Principles Requiring Exemption and Their Application to the SWP by the Courts

In its 2009 Opinion, the Commission found, upon a record that is comparable to that presented here, that exemption from the reporting and disclosure requirements of the Act was constitutionally required under the Supreme Court's decisions in *Buckley v. Valeo*, 424 U.S. 1 (1976) and *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87 (1982). The Commission recognized that “under certain circumstances, the Act's disclosure requirements as applied to a minor party would be unconstitutional because the threat to the exercise of First Amendment rights resulting from disclosure would outweigh the government's insubstantial interest in disclosure by that particular entity.” 2009 AO at 3. The Commission considered

various incidents demonstrating continuing harassment of the SWP, its members, and affiliates, and took into account the long history of governmental harassment that began in 1941 with the FBI's generalized investigation of the SWP and continued unabated for at least 35 years. Applying *Buckley* and *Socialist Workers*, the Commission granted an exemption from the disclosure requirements of the Act.

The fundamental constitutional principle recognized in *Buckley v. Valeo* and *Brown v. Socialist Workers '74 Campaign Committee* is that the "First Amendment prohibits a State from compelling disclosure by a minor party that will subject those persons identified to the reasonable probability of threats, harassment, or reprisals," *Socialist Workers*, 459 U.S. at 101. In *Buckley*, the Supreme Court recognized that the requirements of the Federal Election Campaign Act as applied to minor parties and independent candidates in particular may under certain circumstances be unconstitutional because of the danger of significant infringement of First Amendment rights. *Id.* at 71. The Court recognized that "the governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election." *Id.* at 70. Additionally, the Court noted that minor parties are unlike the major political parties because they "usually represent definite and publicized viewpoints, [thus] there may be less need to inform the voters of the interests that specific candidates represent." *Id.*

The Court, while refusing to endorse a blanket exemption for all minor parties, held that particular minor parties might present circumstances similar "to those before the Court in *NAACP v. Alabama* [357 U.S. 449 (1958)] and *Bates* [*v. Little Rock*, 361 U.S. 516 (1960)],

where the threat to the exercise of First Amendment rights is so serious and the state interest so insubstantial that the Act's requirements cannot be constitutionally applied.” *Buckley*, 424 U.S. at 71. As an illustration of such a case, the Court referred to *Doe v. Martin*, 404 F. Supp. 753 (D.D.C. 1975) (three judge court), which concerned a branch of the Socialist Workers Party.¹

In *McIntyre v. Ohio Elections Comm.*, 514 U.S. 334 (1995), the Supreme Court held that an Ohio statute prohibiting distribution of anonymous campaign literature violated the First Amendment. There, the Court reiterated the principle that FECA, while facially constitutional, is not constitutional in all of its applications. *Id.* at 1524 n.21. By way of illustration and example, the Court approvingly cited and quoted *Buckley v. Valeo* as “exempting minor parties from disclosure requirements if they can show a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties” and *Brown v. Socialist Workers '74 Campaign Committee* as “holding Ohio disclosure requirements unconstitutional as applied to a minor

¹ The *Martin* case, cited with approval by the Supreme Court, concerned the constitutionality of portions of the 1974 District of Columbia Campaign Finance Reform and Conflict of Interest Act, Pub. L. 93-376, 88 Stat. 446, requiring, *inter alia*, every political committee to keep records showing the name, address, and place of business of contributors of \$10 or more, the designation of a depository bank through which the political committee will conduct all of its financial business, and the filing of publicly available reports listing the name, address, and place of business of each contributor of \$50 or more, as well as civil penalties for non-compliance. *See Doe v. Martin*, 404 F. Supp. at 755 n.1. In *Martin*, the plaintiffs asserted that the name, address, and places of employment of those supporting the SWP “will be noted by the FBI and others and that inquiries or other detrimental social pressures will ensue affecting employment and privacy.” *Id.* at 755. The Court had before it affidavits showing that SWP members had been harassed by government agencies and others, and also the findings of the Minnesota Ethics Commission exempting the Minnesota Socialist Workers 1974 Campaign Committee from the disclosure requirements of the Minnesota Ethics in Government Act of 1974. *Id.* at 756-57 n.4.

political party which historically has been the object of harassment by government officials and private parties.” *Id.* (internal quotations omitted).

As the Commission has recognized, the Court found in *Brown v. Socialist Workers '74 Campaign Committee (Ohio)* that the SWP had met the *Buckley* standard and “grant[ed] the SWP an exemption from state campaign disclosure requirements.” *2009 AO* at 3. In *Socialist Workers*, the Court found that:

[t]he District Court properly concluded that the evidence of private and Government hostility toward the SWP and its members establishes a reasonable probability that disclosing the names of contributors and recipients will subject them to threats, harassment and reprisals. There were numerous instances of recent harassment of the SWP both in Ohio and in other States. There was also considerable evidence of past Government harassment. Appellants challenge the relevance of this evidence of Government harassment in light of recent efforts to curb official misconduct. Notwithstanding these efforts, the evidence suggests that hostility toward the SWP is ingrained and likely to continue.

459 U.S. at 100-01.

The Commission also noted that *Socialist Workers* “clarified the extent of the exemption recognized in *Buckley*, stating that the exemption included the disclosure of the names of recipients of disbursements as well as the names of contributors.” *2009 AO* at 3 (citing *Socialist Workers*, 459 U.S. at 95). The Commission has recognized that the *Buckley* standard applies “to both contributors and recipients of disbursements.” *2009 AO* at 4.

In applying the *Buckley* – *Socialist Workers* standards to the SWP, the Commission has taken note of the admonitions of the Second Circuit in *Federal Election Commission v. Hall-Tyner Election Campaign Committee*, 678 F.2d 416 (2d Cir. 1982), *cert. denied*, 459 U.S. 1145

(1983), a case involving the Communist Party. *2003 AO* at 4. The Commission quoted with approval the Second Circuit's statement that:

[W]e note that *Buckley* did not impose unduly strict or burdensome requirements on the minority group seeking constitutional exemption. A minority party striving to avoid FECA's disclosure provisions *does not carry a burden of demonstrating that harassment will certainly follow compelled disclosure of contributors' names*. Indeed, when First Amendment rights are at stake and the spectre of significant chill exists, courts have never required such a heavy burden to be carried because 'First Amendment freedoms need breathing space to survive.' [internal citations omitted]. Breathing space is especially important in a historical context of harassment based on political belief.

2009 AO at 4, quoting *Hall-Tyner*, 678 F.2d at 421-22 (emphasis added).

The Commission went on to quote as applicable here what the Second Circuit ruled as to the Communist Party: that, in light of "the treatment historically accorded persons identified with the Communist Party" and the statutes purporting to subject Communist Party members to civil and criminal liability, the minimal government interest in disclosure could not justify application of the FECA's requirements. *Hall-Tyner*, 768 F.2d. at 422.

The Commission has recognized that *Buckley*, *Socialist Workers*, and *Hall-Tyner* entitle the SWP to exemptions. *2009 AO* at 4. Moreover, the Commission has recognized that it remains the case that "hostility toward the SWP is ingrained and likely to continue." *2009 AO* at 3 (quoting *Socialist Workers*, 459 U.S. at 101).

The Supreme Court, in the course of holding the disclosure requirements of 2 U.S.C. § 441-a1 unconstitutional, reaffirmed in *Davis v. Federal Election Commission*, 554 U.S. ___, 128 S.Ct. 2759 (2008), the central premise of *Buckley*: that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment," and

that therefore “disclosure requirements, including requirements governing independent expenditures made to further individuals’ political speech” can only survive constitutional scrutiny if there is “a ‘relevant correlation’ or ‘substantial relation’ between the governmental interest and the information required to be disclosed.” *Id.* at 2774-75 (quoting *Buckley*, 424 U.S. at 64, 75). In other words, “the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights,” *id.* It is precisely this test that requires continuing exemption of the SWP from FECA’s disclosure requirements.

Subsequent to the Commission’s 2009 Advisory Opinion, the Supreme Court has continued to reaffirm this principle. In *Citizens United v. Federal Election Commission*, 558 U.S. 310, 130 S. Ct. 876 (2010), the Court again emphasized that because “[d]isclaimer and disclosure requirements may burden the ability to speak” it “has subjected these requirements to ‘exacting scrutiny,’ which requires a ‘substantial relation’ between the disclosure requirement and a ‘sufficiently important’ governmental interest.” *Id.* at 914 (quoting *Buckley*, 424 U.S. at 64, 66). And in *John Doe No. 1 v. Reed*, 130 S. Ct. 2811 (2010), the Court, upholding the constitutionality of disclosure of signatory information on referendum petitions required by Washington State law, reiterated that “First Amendment challenges to disclosure requirements in the electoral context” are reviewed under an “exacting scrutiny” standard, *id.* at 2818 (quoting *Citizens United*, 130 S. Ct. at 914) and that “[t]o withstand scrutiny, ‘the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment Rights’”, *id.* at 2818 (quoting *Davis*, 128 S. Ct. at 2774).

E. The Required Showing: “Reasonable Probability” of Threats, Harassment or Reprisals

As the Commission recognized in its 2009 Opinion, 2009 AO at 3, the required showing that a minor political party must make to qualify for an exemption under *Buckley* is as follows:

Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a *reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties. . . .* The proof may include, for example, specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats or specific manifestations of public hostility may be sufficient.

424 U.S. at 74 (emphasis added).

In *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998), the Texas Supreme Court considered what quantum of evidence met the *Buckley* standard. Plaintiffs offered evidence that “individuals opposed to BACALA's agenda had boycotted the business establishments of persons affiliated with BACALA and encouraged others to do the same” and that others would not make contributions to BACALA if they were identified. The Court found that although the harassment was not as severe as that in *Brown v. Socialist Workers*, a “factual record of violent past harassment” was not necessary to meet the *Buckley* standard. *Id.* at 377.

The Texas Supreme Court stated:

In *Brown*, for example, the campaign committee introduced evidence of harassment including threatening phone calls, hate mail, destruction of property, and physical violence. We agree with the taxpayers that the threat to BACALA is not as severe as that demonstrated in cases such as *Brown* or NAACP. However, such a *factual record of violent past harassment is not the only situation in which courts have recognized a potential infringement on an association's First Amendment rights. Local 1814, Int'l Longshoremen's Assoc. v. Waterfront*

Comm'n of New York Harbor, 667 F.2d 267, 271 (2d Cir.1981); *see also Community-Service Broadcasting of Mid-America, Inc. v. Federal Communications Comm'n*, 593 F.2d 1102, 1118 (D.C.Cir.1978) (“The absence of such concrete evidence [of harassment], however, does not mandate dismissal of the claim out of hand; rather it is the task of the court to evaluate the likelihood of any chilling effect....”).

Id. (emphasis added).

The Court then discussed what types of showings might be sufficient:

In *Local 1814*, the court found it sufficient that longshoremen contributors would perceive a connection between contributing to a political fund and being called before the Waterfront Commission and would therefore discontinue their contributions. *Local 1814*, 667 F.2d at 272 [additional internal citation omitted]. And in *Pollard v. Roberts*, the Supreme Court affirmed the district court's recognition of the potential infringement on First Amendment rights that could result from political and economic reprisals, even though no factual showing of such reprisals had been made:

While there is no evidence of record in this case that any individuals have as yet been subjected to reprisals on account of the contributions in question, *it would be naive not to recognize that the disclosure of the identities of contributors ... would subject at least some of them to potential economic or political reprisals of greater or lesser severity*....Disclosure or threat of disclosure well may tend to discourage both membership and contributions thus producing financial and political injury to the party affected.

Pollard v. Roberts, 283 F.Supp. 248, 258 (E.D.Ark.), *aff'd. per curiam*, 393 U.S. 14 (1968).

In sum, BACALA has offered factual, non-speculative evidence of economic and political reprisals against itself and its contributors. This evidence is sufficient to satisfy its burden of proof.

Id. (emphasis added).

In *McConnell v. Federal Election Commission*, 540 U.S. 93, 198-99 (2003), the Supreme Court reiterated the standard set forth in *Buckley* and *Socialist Workers* pursuant to which the

SWP consistently has been exempted from FECA's disclosure requirements. In pointed contrast to the plaintiffs in *McConnell*, who offered only conclusory or second-hand evidence of harassment and threat, the SWP has again demonstrated the requisite "reasonable probability" of harm, harassment and threat to SWP contributors and vendors that constitutionally compels exemption. *See McConnell*, 540 U.S. at 198-99.

In *Citizens United*, 130 S. Ct. 876, while upholding the constitutionality of the disclaimer and disclosure provisions of the Bipartisan Campaign Reform Act of 2002 as applied to Citizens United because the group "offered *no* evidence that its members may face [] threats or reprisals," the Court reiterated that "disclosure would be unconstitutional as applied to an organization if there were a reasonable probability that the group's members would face threats, harassment, or reprisals if their names were disclosed." 130 S. Ct. at 916 (citing *McConnell*, 540 U.S. at 198).

In a concurring opinion to the Court's decision in *Reed*, Justice Alito emphasized that "facially valid disclosure requirements can impose heavy burdens on First Amendment rights in individual cases," and that therefore the Court has "long held that speakers can obtain as-applied exemptions from disclosure requirements if they can show 'a reasonable probability that the compelled disclosure of [personal information] will subject them to threats, harassment, or reprisals from either Government officials or private parties.'" 130 S. Ct. at 2822 (citations omitted; alteration in original). Justice Alito went on to explain that "the as-applied exemption plays a critical role in safeguarding First Amendment rights" and stated:

[S]peakers must be able to obtain an as-applied exemption without clearing a high evidentiary hurdle. We acknowledged as much in *Buckley*, where we noted that "unduly strict requirements of proof could impose a heavy burden" on speech.

424 U.S., at 74, 96 S.Ct. 612. Recognizing that speakers “must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim,” we emphasized that speakers “need show only a reasonable probability” that disclosure will lead to threats, harassment, or reprisals. *Ibid.* (emphasis added). We stated that speakers could rely on a wide array of evidence to meet that standard, including “specific evidence of past or present harassment of [group] members,” “harassment directed against the organization itself,” or a “pattern of threats or specific manifestations of public hostility.” *Ibid.* From its inception, therefore, the as-applied exemption has not imposed onerous burdens of proof on speakers who fear that disclosure might lead to harassment or intimidation.

Id. at 2823.

II. The SWP Remains a Minor Political Party

The Court in *Buckley* found that “the governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election.” 424 U.S. at 70. Minor parties are unlike the major political parties because they “usually represent definite and publicized viewpoints, [thus] there may be less need to inform the voters of the interests that specific candidates represent.” *Id.* Additionally, because minor party candidates are unlikely in the foreseeable future to win an election, contributors do not have “a reasonable expectation of exacting a *quid pro quo* from a current or potential elected official” and that therefore the governmental interest “in providing the FEC with data...is not sufficiently compelling to justify the injury resulting to important First Amendment rights.” *Federal Election Commission v. Hall-Tyner*, 524 F.Supp. 955, 961 (S.D.N.Y. 1981), *aff’d* 678 F.2d 416 (2d. Cir. 1982) (Communist Party candidates could not in the foreseeable future have significant impact on election, therefore contributors did not have reasonable expectation of exacting *quid pro quo*).

In its prior Advisory Opinions, the Commission has recognized SWP's status as a minor political party for purposes of constitutional analysis and exemption from FECA's reporting and disclosure requirements. Dispositively, the current submission is comparable to the factual submission that this Commission previously found sufficient to justify SWP's status as a minor political party in 2009. No SWP candidate has won an election in the four years since the last exemption was granted. Ex. D, Declaration of Chris Hoepfner; *2009 AO* at 5 & n.5. SWP candidates for U.S. President received 9,827 votes nationwide in 2008. *2009 AO* at 5 n.5 ("SWP candidates for U.S. President received only 10,791 votes nationwide in 2004 and 9,827 votes (not yet including write-ins) nationwide in 2008"). Further, the SWP ran three candidates on the ballot for the U.S. House of Representatives since 2008 and only one of these candidates received more than 2,700 votes, and that candidate received fewer than 7,000 votes. Ex. D; *2009 AO* at 5 n.5. The SWP has not had any candidates for the U.S. Senate on the ballot since 2008. This is similar to the SWP's ballot presence and vote totals in 2008, 2004 and 2000. *AO 2009* at 5 n.5 ("[I]n 2004, 2006, and 2008, no SWP candidates on the ballot for U.S. Senate (two in 2004 and 2006, and one in 2008) received more than 15,000 votes. Similarly, no SWP candidate on the ballot for the House of Representatives (two in 2004 and 2006, and three in 2008) received more than 4,600 votes in any election during that period.").

Additionally, as of October 20, 2012, a total of 118 people nationwide contributed funds to the Socialist Workers National Campaign Committee for the 2012 election, less than half of the number of people nationwide who contributed funds to the 2008, 2004 and 2000 Committee – 243, 321 and 354, respectively. *2009 AO* at 5 n.5; *2003 AO* at 5 n.6. In 2012, there were only

five contributions *nationwide* to the committee of over \$300. By comparison, there were seventeen such contributions in 2004 and three in 2008. Ex. E, Declaration of Lea Sherman. Additionally, the SWP has not received any “bundled” contributions that would require disclosure and does not foresee receiving any such contributions. The SWP also does not currently have any registered lobbyist, has never had any registered lobbyists, nor does it plan on having such lobbyists. *Id.* Furthermore, the SWP, which was founded in 1938 and has run candidates on the ballot for President and Vice-President of the United States since 1948, has consistently represented a definite and well-publicized viewpoint over many decades. *Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357, 1366 (S.D.N.Y. 1986)

Thus, the levels of electoral and financial support of the SWP and its chances of success at the polls are such that the governmental interest in reporting and disclosure is *de minimis*.

III. The SWP’s Long History of Systematic Harassment

Before turning to recent harassment, we discuss the extraordinary history of government persecution of the SWP – its long duration, exceptional intensity, and gross illegality, all as determined by the federal courts² and by Congress.³ As the Commission explicitly found in its 2009 opinion, this history of harassment is an important factor favoring exemption:

The Commission’s agreement to the consent decrees granting the previous exemptions to the SWP committees has been based upon

² *Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357 (S.D.N.Y. 1986).

³ Sen. Rep. No. 94-755, Senate Select Committee to Study Governmental Operations With Respect to Intelligence Activities, Book II, Intelligence Activities and the Rights of Americans, and Book III, Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans.

the long history of systematic harassment of the SWP and those associating with it and the continuation of harassment. . . . [T]here is a long history of threats, violence, and harassment against the SWP and its supporters by Federal and local law enforcement agencies and private parties. . . . [T]he long history of Federal and local governmental harassment continues to have some present-day chilling effect despite the abatement of Federal governmental harassment.

2009 AO at 4, 10-11. The Commission considered “*both current and historical harassment*” in renewing the exemption in its 1990, 1996, 2003 and 2009 Opinions. *2009 AO* at 4 (emphasis added).

In its previous opinions, *2009 Opinion at 5-6*, *2003 Opinion at 6*, *1996 Opinion at 3-5*; *1990 Opinion at 11,634-35*, the Commission has described some of this extraordinary history of federal misconduct and animus. While there is no need to establish once again the facts already found by the Commission, we do believe it important to summarize here again that prior showing, lest the full force of what transpired be lost. Given the intensity, duration, and pervasiveness of government persecution, it is hardly surprising that the history of FBI disruption (“COINTELPRO”), warrantless burglaries, warrantless wiretaps, informant penetration, and the like still – as demonstrated below – intimidates and hampers the ability of the SWP to solicit contributions and to engage in educational and political activities.

Beginning in 1941, the Federal Bureau of Investigation began a generalized investigation of the SWP which was to last for at least the next 35 years. *Socialist Workers Party v. Attorney*

General, 642 F. Supp. 1357 (S.D.N.Y. 1986).⁴ The investigation began in roughly the same time period that 28 supporters of the SWP were prosecuted and convicted for conspiring to advocate the violent overthrow of the government under the Smith Act, 18 U.S.C. § 2385. *Dunne v. United States*, 138 F.2d 137 (8th Cir. 1943), *cert. denied*, 320 U.S. 790 (1943).

In the course of its investigation, the FBI amassed over 8 million documents. Between the years 1960 and 1976, the FBI employed approximately 1,300 informers, of whom approximately 300 became or were supporters of the SWP, and paid over \$1.6 million to the informers alone. The informers routinely and regularly reported upon the lawful political activities, discussions, and debates of the SWP as well as reported the names, addresses, descriptions and places of employment of supporters and their families. The informers reported, again on a regular basis, a host of personal information including information on marital or cohabitational status, marital strife, health, travel plans and personal habits.

As the Commission recognized, the SWP was the subject of the FBI COINTELPRO Program in the 1960's and 1970s. *1990 AO* at 11,635. The avowed purpose of the program was “designed to disrupt the SWP on a national, as well as local level.” *Id.* (quoting *Socialist*

⁴ The facts concerning the government's generalized investigation of the Socialist Workers Party are drawn from this decision unless otherwise noted. In 1976, over the objections of the FBI, the Attorney General ostensibly terminated the generalized domestic security investigation of the SWP, 642 F. Supp. at 1400. In doing so, he specifically left open the possibility of reopening the investigation in the future, instructing that information concerning an asserted link between the SWP and a foreign-based political group “should be carefully watched” and that the emergence of “new facts or circumstances” may “justify investigation” and “a reconsideration would be in order.” 642 F. Supp. at 1401. As set forth in Section IV, *infra*, the government continues to investigate and harass U.S. advocacy groups engaged in constitutionally protected activity.

Workers Party v. Attorney General, 642 F. Supp. at 1348). Under the COINTELPRO Program directed specifically at the SWP,⁵ at least 46 specific disruption operations were conducted by the FBI. The disruption included, among other activities,⁶ attempts to embarrass SWP candidates, cause the arrest of candidates, foment racial strife within the SWP and between the SWP and other groups, and cause strife between SWP supporters and others in a variety of political movements and coalitions.

The Commission found that the FBI conducted warrantless electronic surveillance of the SWP on an extensive basis. *1990 AO* at 11,635. Electronic eavesdropping resulted in the collection of all manner of information on political matters as well as a host of information on more personal matters.

During the same time period, the FBI conducted at least 204 “surreptitious entries,” *Id.*, or black bag jobs, *i.e.*, burglaries of the offices of the SWP. These burglaries were, of course, not the only means by which the government obtained documents, for the government also maintained an extensive network of informants who, as the Commission found, “reported on the activities, discussions, and debates of the SWP.” *Id.*

⁵ The SWP was also targeted for disruption under the auspices of the COINTELPRO Programs directed against the Communist Party and the “New Left.” 642 F. Supp. at 1385.

⁶ An overview of the disruption activities is set forth in *Socialist Workers Party v. Attorney General*, 642 F. Supp. at 1385-89. A more detailed description of many of the disruption activities can be found in Nelson Blackstock, COINTELPRO: THE FBI'S SECRET WAR ON POLITICAL FREEDOM (3rd ed. 1988).

As the Commission noted, over a period of many years, the FBI maintained lists of the names, addresses, and employers of SWP members – successively identified as the Custodial Detention List, the Security Index and the Administrative Index – which targeted individuals for detention in the event of a “national emergency.” *Id.* at 11,635. The FBI intended to include all SWP members on these lists. *Id.*

Beginning in 1948, the SWP was included on the Attorney General's list of organizations designated pursuant to Executive Order 9835 establishing the Employee Loyalty Program for certain employees of the executive branch of the government.⁷ Under the program, any member of a listed organization who applied for a job was subjected to a full field investigation by the FBI and was questioned concerning his or her loyalty. The loyalty determination was then used in determining whether to hire the individual.⁸ *Socialist Workers Party v. Attorney General*, 642 F. Supp. at 1396-97.

⁷ Executive Order 9835 provided that in determining loyalty to the government, one of the factors to be considered was an individual's membership in an organization designated by the Attorney General:

as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

Executive Order 9835 was substantially amended by Executive Order 10241 and superseded by Executive Order 10450 so as to include *all* government civilian employees. The Attorney General continued to maintain his list including the SWP throughout these changes.

⁸ There have been a number of instances in which the fact of the individual's association with the SWP affected his or her employment, including numerous instances since 2008. *See* 642 F. Supp. at 1389-99; *see also infra* at 37-40.

Even after the Attorney General's list was terminated in 1974, the FBI continued to report an individual's membership in the SWP. Post-1974, the FBI described the SWP as follows:

The SWP is a revolutionary, Trotskyist-communist organization which has as its purpose the overthrow of the U.S. Government and the institution of a dictatorship of the working class and the eventual achievement of a communist society.

642 F. Supp. at 1399.

In 1986, after 13 years of litigation, the court in *Socialist Workers Party v. Attorney General* awarded damages against the United States for this sustained and systematic violation of the SWP's rights. 642 F. Supp. at 1417-25. It found that the FBI had acted "with a malign purpose," with the intent of causing harm, and without any legal authority or justification. *Id.* at 1419-20.

As the Commission has found, there is reason to believe that the federal animus against the SWP continues, *1990 Opinion* at 11,635, reinforcing the chilling effect on First Amendment rights created by past misconduct. The Commission noted that, even after the federal court had issued its 1986 judgment holding the FBI's decades-old campaign against the SWP unconstitutional, *Socialist Workers Party*, 642 F. Supp. 1357, and had further found that, as the Commission summarized the holding, the SWP was engaged in "peaceful, lawful political activity," *1990 AO* at 11,635, the federal government submitted affidavits in 1987 asserting a continuing need to access information about the SWP, its members, and supporters. The Commission found these affidavits to be significant evidence of continued governmental

hostility, and that the government continued to view the SWP as a “hostile organization which has consistently posed a threat to free government.” *Id.* (internal quotations omitted).

Indeed, the government continued to insist that “it was – *and is* – reasonable for the FBI and other agencies of the Government to believe that the SWP and its members have a revolutionary ideology whose goal is the violent overthrow of our democratic processes and form of government.” Ex. B to SWP’s November, 1, 1996 Advisory Opinion Request to the FEC (“1996 Request”) at 9 (emphasis supplied); this “revolutionary ideology . . . poses a threat to the fundamental interest of self-preservation,” *id.* at 10. On this basis, the federal government asserted an interest in and need to know and record the names of members and individuals associated with the SWP. *See Socialist Workers Party v. Attorney General*, 666 F. Supp. 621, 623 (S.D.N.Y. 1987).

Various government agencies expressed their intent to use such information, and their fundamental antagonism toward the SWP, in clear terms. For example, the Office of Personal Management argued that such “information [is] important because these organizations in the past were opposed to our form of Government and the national interest.” Declaration of Gary B. McDaniel ¶ 6, Ex. C to 1996 Request. The Department of State asserted its need for access to these files because of a need for information about, in its words, “interaction with a group advancing a hostile ideology” for security clearances, and “information about any hostile organization which has consistently posed a threat to free governments. . . .” Declaration of Roger H. Robinson, ¶¶ 4, 6 Ex. D to 1996 Request. The Immigration and Naturalization Service claimed a need to know the identities of SWP supporters in order to enforce laws making an

individual who advocates world communism or the establishment of totalitarian dictatorship deportable from this country, excludable from this country or ineligible for naturalization. Declaration of Edwin W. Dornell, ¶¶ 5, 6, Ex. E to 1996 Request.⁹ See also Declaration of Thomas J. O'Brien ¶¶ 3-9, Ex. F to 1996 Request, explaining need for access to FBI files on the SWP because they “may serve to corroborate or establish an affiliation with” an organization “characterized by Executive Order 10450” for the purposes of investigations of members of the armed services, civilian employees and employees in industry by the Defense Investigative Service.

The court ruled against the government’s demand for access to the names of SWP members and associated individuals. *Socialist Workers Party v. Attorney General*, 666 F. Supp. at 623. Nonetheless, the government’s assertions of need for information and its pronouncements of its intended use reinforce the lesson reasonable persons draw from the historical record of federal misconduct and animus: that disclosure of their relations with or support of the SWP or its candidates might provide, now or sometime in the future, a basis for federal investigation or other prejudicial actions.

⁹ See 8 U.S.C. §§ 1182(2)(28)(D) and (F), 8 U.S.C. § 1251(a)(6)(D) and 8 U.S.C. 1424(a)(3). There are numerous statutes in addition to these immigration provisions which place supporters of the SWP in danger of legal sanctions or harassment if their associations were made public. In addition to the Smith Act, 18 U.S.C. § 2385, there is a host of other legislation which potentially exposes individuals to civil and criminal sanctions. See discussion in *FEC v. Hall-Tyner Election Campaign Committee*, 678 F.2d at 422 and statutes surveyed in Appendix to Brief of Defendants-Appellee filed in that case.

IV. Recent Changes in Government Surveillance Guidelines and Practices Powerfully Reinforce the Chilling Effect of the Government's Long History of Systematic Harassment of the SWP and Make the Recent Instances of Violence and Intimidation Even More Weighty

Recent changes in government surveillance guidelines and practices, together with well-reported examples of improper government surveillance of U.S. advocacy groups, powerfully reinforce the chilling effect of the government's long history of systematic harassment of the SWP and make the recent instances of violence and intimidation against the SWP and its supporters even more weighty.

The Inspector General of the Department of Justice recently conducted an investigation to assess the FBI's domestic surveillance, finding in a September 2010 report ("OIG Report") that, in the decade following September 11, 2001, the FBI had improperly investigated U.S. advocacy groups. The Report cites cases in which agents put activists on terrorist watch lists even though they were planning constitutionally protected nonviolent civil disobedience and discloses investigations by the FBI of groups such as People for the Ethical Treatment of Animals (PETA), Greenpeace, the Catholic Worker Movement, and the Thomas Merton Center. The Report found that in some cases the FBI began investigations of people affiliated with such activist groups for "factually weak" reasons. In other cases, the FBI extended investigations "without adequate basis" and "improperly collected and retained First Amendment information" about activist groups in its files. Ex. F, at 187. It also inappropriately classified investigations unrelated to terrorism as pertaining to "acts of domestic terrorism," which "raise[s] questions about whether the FBI has expanded the definition of domestic terrorism to people who engage in mainstream

political activity, including nonviolent protest and civil disobedience.” Ex. F, at 23. The report was widely covered in the media. Ex. G. The *New York Times* noted that the OIG Report revealed that under current rules limiting FBI investigations, “keeping information in F.B.I. files related to political activities deemed irrelevant to potential criminal or terrorist activity” is no longer improper. Ex. G, at 1.

The cases detailed in the OIG Report are not the only known cases that reveal a continued pattern of improper government surveillance of organizations and individuals engaged in constitutionally protected political activity. We attach hereto a number of articles concerning: police activity on both a local and national level reflecting stepped-up spying, use of undercover informers, and other measures aimed at organizations and individuals engaged in constitutionally protected political activity, including use of the FBI’s terrorist watch list to track political activists. The articles also demonstrate that this kind of spying and harassment is becoming increasingly well known to the public at large in this country. Ex. H.

Furthermore, the articles reveal that the government has targeted for surveillance and harassment groups including the Freedom Road Socialist Organization and the Antiwar Committee, which engage in activism concerning issues that are also the subject of SWP activity, including labor rights, the political rights of Muslims, and criticism of current U.S. military policy. Ex. H.

In addition, the American Civil Liberties Union (ACLU) has collected information about numerous cases of improper government surveillance, which are summarized in a 2010 report discussed below. Ex. I.

These cases identified by the press and civil liberties organizations as well as the Office of the Inspector General, took place even *prior to* relaxations in the Attorney General's *Guidelines for Domestic FBI Operations* in 2008, which the SWP detailed in its 2008 FEC exemption request, and the FBI's *Domestic Investigations and Operations Guide* (DIOG) in 2011. (The 689-page DIOG can be accessed at <http://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29/fbi-domestic-investigations-and-operations-guide-diog-2011-version>). According to the *New York Times*, the new edition of the FBI's *Domestic Investigations and Operations Guide* manual gives FBI agents more latitude to conduct investigations as they search for signs of criminal or terrorist activity. The updated manual allows agents to search for information about a person in a commercial or law enforcement database without making a record about their decision. Under the previous rules, agents were required to open a formal inquiry in order to search databases. The new rules also ease restrictions on searching people's trash, remove certain limitations on the use of surveillance squads to surreptitiously follow targets, and reflect a relaxed interpretation of what constitutes "undisclosed participation" in an organization by an FBI agent or informant, which is subject to special rules. The new manual allows an agent or an informant to surreptitiously attend up to five meetings of a group before the special rules for "undisclosed participation" would apply. Ex. J.

Since 2008, the FBI has used the low bar set for initiating an investigation known as an "assessment" to conduct thousands of low-level investigations each month without a factual basis. Indeed, a four-month survey conducted by the Justice Department from December 2008 to

March 2009 revealed that the FBI initiated 11,667 “assessments” of people and groups. The survey revealed that the vast majority of “assessments” lacked sufficient basis to lead to more intensive investigations. Ex. K. There have also been reports in the press, based on government documents, of surveillance by the Department of Homeland Security and the FBI of the First-Amendment-protected activities of individuals involved in the Occupy Wall Street protests. Ex. L.

Additionally, according to an October 2012 congressional report issued by the subcommittee on investigations of the U.S. Senate’s Committee on Homeland Security and Governmental Affairs, the state and local law enforcement intelligence “fusion centers” “created or expanded” – post 9/11 – “in part to strengthen U.S. intelligence capabilities, particularly to detect, disrupt, and respond to domestic terrorist activities” produced little information of value and frequently overstepped laws designed to protect American’s civil liberties and privacy. The subcommittee found that intelligence gathered by the fusion centers was “of uneven quality...sometimes endangering citizens’ civil liberties and Privacy Act protections...and more often than not unrelated to terrorism.” Ex. M. The Report stated that the “Subcommittee investigation could identify no reporting which uncovered a terrorist threat, nor could it identify a contribution such fusion center reporting made to disrupt an active terrorist plan.” Instead, the investigation found, among other things, that: nearly a third of all reports originating during the relevant period – 188 out of 610 – were not published because they lacked any useful information, or potentially violated department guidelines meant to protect Americans’ civil liberties or Privacy Act protections; that “DHS continued to store troubling intelligence reports

from fusion centers on U.S. persons, possibly in violation of the Privacy Act”; and that “[m]ost reporting was not about terrorists or possible terrorist plots.” Ex. M, at 2. The Subcommittee investigation also discovered that “[o]fficials who routinely authored useless or potentially illegal fusion center intelligence reports faced no sanction or reprimand.” Ex. M, at 3.

Furthermore, recent sweeping changes to the National Counterterrorism Center’s (NCTC) guidelines governing collection and use of information about U.S. persons not suspected of wrongdoing allow the NCTC to collect and retain information on innocent Americans from numerous government agencies, including the FBI, for up to five years. Previously, the NCTC was authorized to collect and hold on to records on U.S. citizens and residents from federal government databases for up to 180 days. Because the NCTC was required to discard non-terrorism related information within 180 days, it was dissuaded from collecting large databases filled with information on innocent Americans because the data had to then be carefully screened. The 2012 update to the NCTC Guidelines authorized the retention of such information for five years, essentially removing the restraint against wholesale collection of Americans’ personal information by the government, significantly expanding the Government’s authority to engage in scrutiny of Americans with no suspected ties to terrorism. Thus, the updated NCTC Guidelines, which were approved by the Attorney General, give the intelligence community much broader access to information about Americans retained in various government databases. Under the changed guidelines, innocent people’s information may remain in intelligence databases for five years without any suspicion of wrongdoing. Exs. N (NCTC Guidelines) and O (ACLU analysis of NCTC Guidelines).

Reports prepared by the Attorney General in 2010 and 2011 also reveal a dramatic increase in government surveillance of telephone and electronic communications. Between 2009 and 2011, the combined number of original orders for pen registers and trap-and-trace devices used to conduct surveillance of phone communications increased by 60 percent from 23,535 in 2009 to 37,616 in 2011. During that period, the number of people whose telephones were the subject of such surveillance more than tripled, subjecting more people to pen-register and trap-and-trace surveillance in those two years than in the entire previous decade. Also during that period, the number of authorizations the Justice Department received to use pen-register and trap-and-trace orders targeting individuals' email and network communications data increased 361 percent. Ex. P.

The ACLU has closely followed government surveillance trends, including those discussed above, and in a 2010 report concluded: "Law enforcement agencies across America continue to monitor and harass groups and individuals for doing little more than peacefully exercising their First Amendment rights." At the time it issued that report, a thorough search and review of news accounts by the ACLU reveal[ed] that "political surveillance and harassment by U.S. law enforcement agencies are on the rise with incidents reported in at least 33 states since 9/11." Ex. I. Based on these findings, Michael German, ACLU Policy Counsel and former FBI Special Agent, stated:

Unfortunately, law enforcement in our country seems to be reverting to certain old, bad behaviors when it comes to political surveillance. Our review of these practices has found that Americans have been put under surveillance or harassed by the police just for deciding to organize, march, protest, espouse unusual viewpoints and engage in normal, innocuous behaviors[.]"

Id.

Investigations by Congress and the Executive Branch, press reports, and studies by civil liberties organizations strongly suggest that current government surveillance guidelines and practices, including those of the FBI, are excessive, inconsistent with the First Amendment, readily subject to abuse and threaten to renew the very type of practices and excesses that characterized the FBI's long history of harassment of the SWP.

Furthermore, these investigations and reports have uncovered improper government surveillance of groups that are engaged in activities in furtherance of a range of issues to which the SWP has demonstrated a long-standing and unwavering commitment. This provides persuasive evidence that government agencies continue to be actively engaged in surveillance of the SWP, as well.

Consequently, any person interested in the SWP could have a reasonable fear that association with the SWP may well subject them to government surveillance and harassment. The government's current anti-terrorism domestic programs, its targeting of these programs toward U.S. advocacy groups advocating concerning many of the same issues as does the SWP, coupled with its express interest in the SWP on a terrorism rationale, make the need for continued exemption particularly compelling.

V. Continuing Harassment: 2009-2012

A. Summary

Dispositively, the record of recent harassment is comparable in number and kind of incidents to the record that the Commission previously found sufficient to require exemption in

2009, despite the shorter exemption period. For the six-year 2002-2008 period, we documented 76 incidents of harassment and for the 1996-2002 period, we documented 74 incidents of harassment. Here, we document 45 incidents during the past four years (four sixths of 74 is 49 and 76 is 50). Here, as in the 2002-2008 period, there were threats of violence on SWP campaign supporters both in person and by mail and telephone, job firings and discrimination, and harassment of SWP supporters and campaign efforts by local law enforcement as well as private individuals. In addition, there was alarming evidence of the federal government's continued information gathering concerning the SWP and its candidates and supporters.

As with the prior request, this description of incidents is not meant to be exhaustive, as acts of intimidation and harassment against the SWP and its supporters are frequent enough that they often go unreported to any central body.

For the present period, as with our prior submission, each incident is documented by the sworn declaration of a person with personal knowledge of the matter. This showing is supplemented with contemporaneous correspondence, official records, or articles that appear in mass circulation sources unrelated to any party.

This submission meets even a high evidentiary standard. However, it is worth noting again Judge Alito's explanation, citing prior Supreme Court precedent, that this exemption *does not* need to clear a high evidentiary hurdle and emphasizing that applicants "need show only a reasonable probability 'that disclosure will lead to threats, harassment, or reprisals' ... [and] must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim ... [S]peakers c[an] rely on a wide array of evidence to meet that standard, including

‘specific evidence of past or present harassment of [group] members,’ ‘harassment directed against the organization itself,’ or a ‘pattern of threats or specific manifestations of public hostility.’ From its inception, ... the as-applied exemption has not imposed onerous burdens of proof on speakers who fear that disclosure might lead to harassment or intimidation.” *Reed*, 130 S. Ct. at 2823 (internal citations omitted).

As shown in detail below:

- Harassment of the SWP supporters continues to take place nationwide.
- The harassment has included:
 - Documented threats of physical violence against SWP officers and campaign supporters – Exs. 10-14;
 - Four firings of SWP candidates and campaign supporters – Exs. 1-4 (compared to three firings in the six-year prior period);
 - Five documented instances of harassment in the workplace of SWP candidates and supporters – Exs. 5-9;
 - A harassing and intrusive interrogation of a SWP candidate by a Canadian immigration officer that provides persuasive evidence of continued information gathering on the SWP and its candidates and supporters by the federal government as the Canadian immigration authorities already had substantial information on her U.S., SWP-related political activities that almost surely was provided by the FBI or other U.S. authorities – Ex. 15.
 - Repeated harassment by local law enforcement officials and private security officers – Exs. 16-32, 34, 37, 39-43.
- There continues to be widespread intimidation of SWP supporters, as well as surveillance of SWP campaign activity, by federal and local law enforcement and private parties. Exs. 16-45.
- Not surprisingly, there continues to be persistent widespread fear, frequently articulated, of associating, or even appearing to be interested in the SWP that leads people to refrain from supporting the SWP in any way. Exs. 46-57. (Almost twice the number of declarations relative to the prior 6-year period).

SWP candidates and their supporters also continue to suffer workplace discrimination based on their political views.

For example, in November 2009, Lisa Potash, the SWP candidate for Mayor of Atlanta in 2009, was laid off with some other workers when there was a shortage of available work. Although the company called other laid-off workers back to work and hired some new workers, the company refused to rehire Potash. Ex. 2.

In June 2010, Ms. Potash was fired from the Yokagawa Corp. in Newnan, Georgia, after she became an SWP candidate for U.S. Senate and other SWP campaigners distributed *The Militant* in the industrial park in which Yokagawa was located. Prior to her termination, Potash had consistently received very good performance evaluations. Her work had been described by the company as “great.” There were “no attendance issues,” and her supervisor had called her a “very nice lady.” Ex. 1.

In July 2012, Samuel W. Manuel, was fired from his job at an ATV-Golf cart production plant in Newnan, Georgia, shortly after participating in a good-bye dinner for another worker in the plant who was an SWP candidate for the U.S. Congress. Manuel had worked at the plant for almost a year and, prior to attending the dinner, had only received good reports about his work from his supervisors. Ex. 3.

In July 2012, Steven J. Warshell, Socialist Workers Party candidate for United States Congress in the 18th District of Texas, was fired from a temporary position at Toshiba International in Houston, Texas after he discussed his candidacy with other employees. Ex. 4.

Additionally, the threat of workplace discrimination based on support for the SWP is greater today because of increased access to the FEC databases with political contribution information. It is easier than ever today to find out an employee's, or potential employee's, political affiliation or contributions merely by searching for their name on Google or one of several websites, such as <http://fundrace.huffingtonpost.com>, www.opensecrets.org or www.campaignmoney.com that access FEC public databases with political contribution information. As stated on the *Huffington Post*'s Fundrace website, "Fundrace makes it easy to search by name or location to see which candidates or political parties your friends, family, co-workers and neighbors are contributing to." Ex. Q.

SWP candidates and supporters continue to be subjected to heightened scrutiny, harassment and surveillance by government officials. For example, in June 2011, the SWP candidate for Mayor of Philadelphia and campaign supporters were distributing campaign literature and *The Militant* newspaper on a public street near the Sunoco Oil refinery, when they were approached by two Philadelphia police officers who, after looking at campaign literature and *The Militant*, a newspaper that editorially supports SWP candidates, harassed them and warned "We can put you on the no-fly list. Report you to Homeland Security." The police officers also accused them of blocking the street and improperly selling products. The SWP campaign supporters were not in the street or blocking car or pedestrian traffic and were not selling products, but rather distributing campaign literature and *The Militant* newspaper. The police officers took their IDs back to their patrol car, temporarily, then parked their vehicles facing the campaigners as they continued to campaign and remained parked until the

campaigners left. The police officers drove away as soon as the SWP campaigners left. People driving by viewed this incident. Ex. 16. As detailed below, there have been numerous similar instances of harassment by local police officials throughout the country. Exs. 17-28. As detailed below in Section V(c), we have reviewed the city ordinances for Philadelphia and have determined that the SWP campaigners' activity was authorized by the local code and, in any event, the police officers' actions clearly reveal that there was an anti-SWP animus in their interactions with the SWP.

While crossing the U.S.-Canada border in 2012, Maura DeLuca, the 2012 SWP candidate for Vice-President of the U.S., was stopped and questioned for over two hours by Canadian immigration authorities. Within seconds of scanning DeLuca's passport, the immigration officer was able to review on her computer "a sizable dossier" concerning DeLuca and her prior activities – such as that she is on the National Committee of the SWP and she had traveled to Cuba for *The Militant* newspaper. The only possible explanation for this is that the U.S. federal government has been gathering information and monitoring the SWP and its members and sharing this information with Canada, and possibly other countries. It is well known that the FBI has been sharing information concerning U.S. citizens with Canadian authorities for well over 50 years and has only increased this sharing of information since 9/11. Ex. R. DeLuca was questioned by the officer extensively about her participation in a campaign meeting of the Communist League, a Canadian organization, and her prior trip to Cuba and her reason for traveling to Canada. The officer also questioned DeLuca concerning some political information that would not be readily available on-line. Ex. 15.

In March 2011, a threatening message was left on the phone at the New York City Socialist Workers Party headquarters saying “The president of the campaign must leave town now or he will be shot on sight,” and, in October 2012, a man vigorously shook the glass door of the SWP headquarters in Miami, Florida, which was locked at the time, during an organizational meeting and yelled, “If Obama wins I’m going to kill every one of you commie cock-suckers” while glaring at the SWP supporters inside. He then waited in the parking lot in front of the campaign headquarters for the next half hour, yelling other less audible obscenities.

The long history of harassment against the SWP by the government and private entities, the recent changes in government surveillance guidelines and practices, and repeated instances of intimidation, violence and reprisals against SWP candidates and supporters over the past four years combine to create an intimidating and hostile atmosphere that deters association with the SWP. This is not only evident as a matter of common sense and experience, as the Commission has previously recognized, but is further established by testimony submitted here.

Indeed, in the 2002-2008 period, we provided evidence of a total of 11 specific declarations that revealed a constant and pervasive fear by individuals throughout the country of associating with the SWP. In the shorter 2009-2012 period, we provide evidence of 12 declarations demonstrating the significant increase in the number of individuals who have expressed interest in SWP campaigns but declined to lend their support for fear of harassment or reprisal.

For example, during the past year, when an SWP supporter asked a fellow worker if he would become an elector for the Florida Socialist Workers Party, the potential elector, who had

previously bought copies of *The Militant* newspaper and attended programs and political actions, declined to become an elector because he did not want “to be on any government lists.” Ex. 55. In September 2012, in Santa Rosa, California a young woman, who expressed interest in the campaign and support for many of the SWP’s positions declined to subscribe to *The Militant*, explaining that she feared that receiving a socialist newspaper at her home might jeopardize her application for citizenship. Later that same day, a second woman declined to subscribe to *The Militant*, stating that she feared that being put on the subscriber list might jeopardize her status as a recipient of housing through the U.S. Department of Housing and Urban Development. Ex. 49. These examples echo innumerable other encounters throughout the country in which people interested in the campaign or *The Militant*, a newspaper that editorially supports SWP candidates declined either to sign a nominating petition or to purchase a subscription to *The Militant* expressly for fear of being placed on an FBI or other government list and being harassed. See Exs. 47, 53-54, 56-57 (California); 46 (Maryland), 48 (Washington), 50 (Florida), 51-52 (New York).

B. Specific Incidents

We summarize below post-2008 incidents of harassment, threats, and reprisals. The supporting declarations and the evidence are bound in a separate volume with the corresponding exhibit numbers.

FIRINGS AND WORKPLACE HARASMENT

1. In June 2010, Lisa Potash was fired from her job at the Yokagawa Corporation in Newnan, Georgia, after becoming an SWP candidate for U.S. Senate, allegedly on the

ground that she was “not a good fit.” She was fired immediately after SWP campaigners distributed *The Militant* in the industrial park in which Yokagawa was located and one of the company group leaders informed a top manager, in front of Potash, that Potash had bought a copy of *The Militant* newspaper from SWP campaigners. Prior to her termination, Potash had consistently received very good performance evaluations. Her work had been described by the company as “great.” There were “no attendance issues,” and her supervisor had called her a “very nice lady.”

2. In November 2009, Lisa Potash, the SWP candidate for Mayor of Atlanta in 2009, was called into the manager’s office and put on probation, shortly after: she published a letter in the *Atlanta Journal Constitution*, explaining the SWP’s campaign platform; and one of her supervisors commented on her politics during work. Potash had worked at the company for almost a year prior to the publication of the letter, without incident. Potash was subsequently laid-off, along with other workers, when there was a shortage of work. However, when the work returned, the company called back other laid-off workers and hired some new workers, but the plant manager refused to call back Potash.
3. In July 2012, Samuel W. Manuel, was fired from his job at an ATV-Golf cart production plant in Newnan, Georgia, one week after participating in a good-bye dinner for another worker in the plant who was an SWP candidate for the U.S. Congress at a restaurant where several other supervisors and workers were that day. He had worked at the plant for almost a year and, prior to attending the dinner, had only received good reports about his work from his supervisors. The agency that hired Manuel to work at the plant was

surprised that he was fired. Three days before Manuel was fired a supervisor shouted at another worker and SWP supporter in front of his co-workers: the “Socialist Workers Party isn’t that the same as communism?” Manuel was known among co-workers and company management to be a supporter of the Socialist Workers Party.

4. In July 2012, Steven J. Warshell, Socialist Workers Party candidate for United States Congress in the 18th District of Texas, was fired from his job as an assembler at Toshiba International in Houston, Texas because of “conversations” and “discussions” he was “having with other employees.” These “conversations” and “discussions” concerned Warshell’s candidacy for U.S. Congress on the Socialist Workers Party ticket and did not take place during work time or in work areas. His termination took place two days after a conversation in which an employee took issue with a point he made in support of striking janitors.
5. In October 2012, Deborah Liatos’s supervisor at Creston Electronics told her that her annual review was revised and lowered by the Human Resources department, resulting in a lowering of Liatos’s raise, after management and Human Resources had noticed Liatos distributing *The Militant* newspaper and thought that she was trying to organize a union. Liatos was not distributing during work hours. Liatos’s supervisor had told her that he had originally given her “high marks,” stating that “Deborah is a very competent builder, she is asked to expedite units that are needed quickly and does an outstanding job.” Liatos is the SWP candidate on the ballot for U.S. Congress in the 15th Congressional District in New York.

6. On April 11, 2011, Michael J Fitzsimmons was called into his department manager's office at Crestron Electronics in Rockleigh, New Jersey, along with his immediate supervisor, shown a copy of *The Militant* which had his name on it, and was told by the manager that "[t]hese are negative ideas and don't belong here." Fitzsimmons is a subscriber to *The Militant* and had given a copy of it to a co-worker.
7. In February 2009, Amanda Ulman, a former SWP candidate for Mayor of Houston, Texas in 2007, was asked by the owner of the sewing factory where she had recently been hired if she was with the Socialist Workers Party. She replied that she was and that she was planning to run for mayor of Houston in 2009. After this discussion, management heavily scrutinized Ms. Ulman's every move and every discussion she had with anyone in the factory. Co-workers were aware of this scrutiny.
8. In July 2012, a known SWP supporter employed at a Yamaha Motor Manufacturing Corporation plant in Newnan, Georgia was repeatedly harassed by a company supervisor about the SWP in front of his co-workers. A co-worker of the SWP supporter had reported to him that other supervisors were upset about statements by the SWP candidate in *The Militant* critical of Yamaha.
9. In September 2011, an SWP supporter who works at Crestron Electronics in Rockleigh, New Jersey learned that her boss asked one of her co-workers whether she was in a political organization affiliated with *The Militant* newspaper. The boss told the co-worker to "let [him] know if you see anything." The SWP supporter is known for being a member of the SWP and distributing *The Militant* newspaper, books, and leaflets to

coworkers outside of working hours.

DEATH THREATS AND THREATS PHYSICAL VIOLENCE

10. In March 2011, a threatening message was left on the phone at the New York City Socialist Workers Party headquarters saying “The president of the campaign must leave town now or he will be shot on sight.”
11. In October 2012, a man vigorously shook the glass door of the SWP headquarters in Miami, Florida, which was locked at the time, during an organizational meeting and yelled, “If Obama wins I’m going to kill every one of you commie cock-suckers” while glaring at the SWP supporters inside. He then waited in the parking lot in front of the campaign headquarters, yelling other less audible obscenities, and, over the next half hour, continued to stay in the parking lot, coming up close to the window of the headquarters two or three more times.
12. In September 2011, an SWP supporter petitioning to put an SWP candidate on the ballot in a special election in the 9th congressional district in New York was harassed by a man who yanked the petitioner board from her hands and began yelling and threatening her and the other SWP campaigners. He followed the SWP campaigners, yelled that they were Nazis and Communists, and menacingly told people not to sign. Most people were intimidated and stayed away from the campaigners. This individual said he was going to call some friends to come and “take care of you.” As the campaigners left, the man followed them to their car, continuing to threaten that his friends were coming and they were going to make sure they never came back, and copied down the license number of

their car. The SWP supporters felt as though they would almost certainly have been subjected to a physical assault if they had not decided to leave.

13. In November 2009, a threatening message was left by phone at the New York City Socialist Workers Party headquarters saying “We’re going to shut you down.”
14. In November 2009, the SWP candidate for Public Advocate of New York City in 2009 received a threatening postcard depicting a bloody fetus at the address where she resided at the time.

FBI SURVEILLANCE AND INFORMATION SHARING

15. While crossing the U.S.-Canada border in 2012, Maura DeLuca, the 2012 SWP candidate for Vice-President of the U.S., was stopped and questioned for over two hours by Canadian immigration authorities. Within seconds of scanning DeLuca’s passport, the immigration officer was able to review on her computer “a sizable dossier” concerning DeLuca and her prior activities – such as that she is on the National Committee of the SWP and she had traveled to Cuba for *The Militant* newspaper. The only possible explanation for this is that the U.S. federal government has been gathering information and monitoring the SWP and its members and sharing this information with Canada, and possibly other countries. It is well known that the FBI has been sharing information concerning U.S. citizens with Canadian authorities for well over 50 years and has only increased this sharing of information since 9/11. Ex. R. DeLuca was questioned by the officer extensively about her participation in a campaign meeting of the Communist League, a Canadian organization, and her prior trip to Cuba and her reason for traveling

to Canada. The officer also questioned DeLuca concerning some political information that would not be readily available on-line.

POLICE

SWP candidates and supporters continue to be subjected to widespread harassment and surveillance by government officials. The instant request includes evidence of thirteen (13) incidents occurring in seven (7) different cities in which the police harassed or threatened arrest of SWP campaign supporters who were distributing noncommercial campaign materials in public spaces for their alleged violations of local regulations. We analyze the city ordinances and municipal codes for these locations in Section V(c) below; however, in sum, we have determined that in at least six of the seven locations the SWP campaigners' activity was authorized by the local code and that the police had exceeded their authority. Moreover, in the one location in which there were legal provisions requiring that individuals obtain a permit before distributing political literature, the police officers' actions clearly reveal that there was an anti-SWP animus in the selective application of these code provisions.

16. In June 2011, the SWP candidate for Mayor of Philadelphia and campaign supporters were distributing campaign literature and *The Militant* newspaper on a public street near the Sunoco Oil refinery, when they were approached by two Philadelphia police officers who, after looking at campaign literature and *The Militant*, a newspaper that editorially supports SWP candidates, harassed them and warned "We can put you on the no-fly list. Report you to Homeland Security." The police officers also accused them of blocking the

street and improperly selling products. The SWP campaign supporters were not in the street or blocking car or pedestrian traffic and were not selling products, but rather distributing campaign literature and *The Militant* newspaper. The police officers temporarily took their IDs back to their patrol car and then parked their vehicles facing the campaigners as they continued to campaign and remained parked until the campaigners ended their campaigning. Once the SWP campaigners left, the police officers drove away. People driving by viewed this incident.

17. In April 2011, SWP supporters in Boston, Massachusetts staffing a table displaying books on socialist politics and *The Militant* newspaper, as well as a poster promoting a march in support of immigrant and worker rights, were harassed by three police officers. After one of the police officers called a supervising officer, the officer repeatedly told the table staffers that they were illegally soliciting without a permit. The SWP supporters explained that they were not selling anything. One of the officers then questioned one of the SWP supporters, asked to see his driver's license and for his height and weight, wrote down this identifying information, and told him that it would be used to track any further activity. The police officer refused to show him, or provide him with, a copy of what he had written down.
18. In October 2011, SWP supporters were staffing a literature table in downtown Chicago, one of many tables set up on a public sidewalk during an Occupy Chicago protest, when, after about 25 minutes, two police officers approached the table and said, "I'm giving you a police order to take this table down, you were warned already and now you'll have to

go to court.” One of the staffers explained that they had not been warned. The officer issued the staffer, Frances E. Farley, a summons for the offense of “storing goods on a table in the public way.” The officers did not order any of the other tables taken down nor did he issue a summons to anyone staffing the other tables. After issuance of the summons, the SWP supporters took down their table.

19. In July 2012, an SWP supporter was distributing literature in support of SWP candidates on campus outside the venue of a candidate’s debate at Miami Dade College North Campus. This individual was approached by both campus police and Miami Dade County police officers and told that he could not distribute the campaign literature there. He was also ordered to put away the campaign literature, and threatened with arrest if he took out the literature again. Many other people were present distributing literature in support of other campaigns in the same area, and none of them was subjected to the same prohibition and threat. A number of bystanders and others viewed this incident and heard these comments.
20. In October 2011, John Hawkins, SWP candidate for Mayor of Chicago and campaign supporters were campaigning and distributing copies of *The Militant* door-to-door in Berwyn, Illinois, when a police officer stopped one of the campaigners and told him he could not distribute newspapers door-to-door without a license for peddling or soliciting. The officer instructed the campaigner to stop going door-to-door and issued him a summons for the offense of peddling/soliciting without proper licensing.
21. In September 2010, an SWP candidate for U.S. Senate in New York and a campaign

supporter were distributing campaign literature, *The Militant* newspaper and books from a campaign literature table on a public street in Brooklyn, New York. After monitoring them for more than thirty minutes, a police officer told the SWP Senate candidate that they could not sell the newspaper without a vendor license from New York City. The staffer explained that she was on public property, campaigning for public office, and allowed to offer newspapers without obtaining a license, citing to the relevant section of the New York City Administrative Code. The officer, after consulting with his superior, issued a summons for an “Unlicensed General Vendor” to the candidate, instructed her to stop selling *The Militant* newspaper, and to take down the table.

22. In May 2010, the SWP candidate for governor in Illinois, and two campaign supporters began to set up a campaign literature table in Daley Plaza, a public plaza in Chicago, when a Chicago police officer informed them that they were prohibited from selling books at that location. Although they informed the officer that they were not selling anything, a second police officer issued the candidate a ticket and summons for “peddling without a license.”
23. In February 2012, SWP supporters set up a literature table on the public sidewalk in front of Miami Dade College, Wolfson Campus. They had copies of *The Militant* newspaper as well as books on socialism. Almost immediately after putting up the table, a campus public safety officer came over and told them they could not sell there. When they told him they were distributing political literature, the officer’s supervisor brought over a Miami City police officer who said that they needed a permit to vend, despite the

supporters' citation to the provision of the Miami City Ordinance Sec. 39-49 that specifically exempts the vending of written materials from the permit requirement, and that if they continued their activity without one, he would arrest them. The SWP supporters left to avoid arrest.

24. In November 2010, SWP candidates for Congress and for governor of Massachusetts were distributing campaign flyers, *The Militant* newspaper, and displaying sample books from a campaign literature table on a public street in Boston, Massachusetts when they were forced by a police officer to take down the table and leave. When the SWP candidates identified themselves as candidates for public office giving out free flyers and protesting that they did not need a license for this activity, the police officer still ordered them to take down the table and obtain a permit to give out their free campaign literature.
25. In November 2010, the SWP candidate for mayor of Washington, D.C. and a campaign supporter were distributing *The Militant* newspaper on public property near the Dreyers Ice Cream factory in Laurel, Maryland. The campaigners were approached by a factory security guard who told the candidate that they could not distribute the paper. After the candidate told the guard that they were on public property, the security guard went away. A short time later a man in a dark blue uniform came out and took pictures of the campaigners. A few minutes later another man walked within a few feet of one of the campaigners and stood there as a Howard County police car drove up to the campaigners. A police officer told the campaigners they had no right to be there because they were creating a traffic hazard and told the campaigners they had to leave. The SWP candidate

and campaign supporter were not blocking traffic at the time.

26. In August 2012, Laura Garza, SWP candidate for U.S. Senate in Massachusetts, and a campaign supporter were distributing literature on a public street in Boston, Massachusetts, when two officers approached them to ask if they had a vendor's license. A third officer was in a police car close by and a police wagon showed up during this confrontation. One of the officers said that there had been 20 calls complaining about the presence of the SWP candidate and campaign supporter. The officers backed off when the candidate informed them that she had contacted the police department lawyer to confirm that they were authorized to distribute and said that the campaigners could not block the passage of pedestrians.
27. In August 2012, Tony Lane, the SWP candidate for U.S. Congress in the 5th Congressional District in Minnesota, and two campaign supporters had set up a table with campaign literature and copies of *The Militant* newspaper and were campaigning on the side of a public sidewalk near the entrance to the Minnesota State Fair. Soon after they began campaigning, a police officer came up to one of the campaigners and told him that campaign tables were prohibited in the vicinity of the Fair. He informed them that they had to take down their table and could only pass out literature, without a table, in a location fifty feet away, which is what they did. Supporters of Socialist Workers Party candidates have set up campaign tables in the same location for the past several years during the time of the Minnesota State Fair without police interference.
28. In August 2009, SWP supporters campaigning for the New York City slate of SWP

candidates at the Borough of Manhattan Community College (BMCC) and distributing campaign literature, *The Militant* newspaper and other information, were harassed by a campus police officer for passing out “unauthorized information.” The campus police officer took two of the campaigners – both BMCC students with campus IDs – to the campus security office, where their identifying information was taken down, and they were told a report would be filed. They were told they could only be on campus while attending classes and escorted off campus.

PRIVATE HARASSMENT

29. In February 2012, SWP supporters, who were distributing *The Militant* newspaper to workers entering and leaving the Caterpillar Corp. Distribution Center in Miami Lakes, Florida, during the morning shift change, were monitored by company managers who took photos with a camera of the SWP campaigners and of workers who stopped to talk with them. On two subsequent occasions, when the SWP supporters returned to distribute *The Militant*, a company security guard approached and stood next to them. There was a noticeable decline in the number of workers who stopped to talk to the SWP campaign supporters after these incidents. Three and a half months later, a worker from the distribution center said that he “wanted to find out what that paper was, but [he] didn’t want to be seen talking with you.”
30. In November 2010, the SWP candidate for mayor of Washington, D.C. and two campaign supporters set up a campaign table with a display of books and posters in a shopping center in Prince George’s County, Maryland when a large white van pulled up

in front of the table, and one of the passengers yelled out: "You have no right to be here. You need to pack up and leave right now." A short while later, six individuals, including the driver and front-seat passenger from the van, came to the table in a threatening manner, insisted that the table be packed up immediately, and threatened to push the table over to the ground. One of the women said, "The FBI is on their way," threw several books on the ground and used her telephone to photograph the campaigners and the table. While the campaigners were waiting for a ride to leave, two police cars arrived and parked approximately 15 yards from the scene of the confrontation but did nothing. While the police were watching, two of the women returned with a bucket of water and threatened to dump it on the boxes of books.

31. In October 2008, SWP supporters campaigning for the SWP presidential and vice-presidential candidates in the public space of the Flamingo Plaza shopping center in Hialeah, Florida were approached by a security guard and asked by a Flamingo Plaza manager what party the candidates were representing. When the campaigners told him that they were representing the Socialist Workers Party candidates, he told them that they could not campaign there. Earlier, there were religious groups passing out literature in the same location without interruption.
32. In July 2009, SWP candidates for various New York City offices were told by two Hunter College campus security guards to leave the campus where they were campaigning and distributing SWP campaign flyers and *The Militant* newspaper. The SWP candidates had previously obtained permission to campaign and distribute their

materials there from the dean of the College; however, the security guards said that they didn't care because they didn't have this permission in writing.

33. In June 2012, an SWP supporter was campaigning door to door in Clarkston, Georgia for Rachele Fruit, the SWP candidate for U.S. Congress in the 4th congressional district. When the supporter knocked on the door of one individual and showed him *The Militant* newspaper, he shouted "Get the F----out of here, right now. I can't believe you're for a socialist." As the SWP supporter was walking away, the occupant continued using foul language and ranted about socialists in a very intimidating manner.
34. In July 2012, Socialist Workers Party supporters were campaigning for James Harris for President and Maura De Luca for Vice President in the public spaces of the Roebing Shopping Center in Trenton, New Jersey when they were told by two security officers and the manager of a store that they had to stop campaigning and leave the shopping center. Earlier in the day, SWP campaign supporters had observed that other people were allowed to distribute religious literature in the same area of the shopping center without incident.
35. In July 2012, staffers at a Socialist Workers Party campaign table at the Northside shopping center in Miami, Florida were harassed by a man who described them as "spies" for the "Castro brothers" and said they had no right to distribute "communist" literature. The man started loudly yelling at others nearby that the SWP campaign supporters had no right to campaign. He then approached a security guard and told the guard that "the communists over there" should not be allowed to have a table.

36. In October 2010, an SWP supporter was campaigning door to door in Mableton, Georgia on behalf of SWP candidates for governor, senator, and the Agriculture Commission. As the campaigner handed a campaign flier to a man at one house, he shouted, "Socialist! Get the hell off my property and I hope you trip and fall and break your neck!"
37. In July 2012, an SWP supporter and SWP's candidate for Vice President Maura DeLuca were distributing campaign literature and *The Militant* newspaper and collecting signatures on a nominating petition for SWP's candidate for the 15th congressional district on a public sidewalk in front of a Pathmark grocery store in New York City. After about an hour, a store manager told them that he was told by "corporate security" that the store was "private property" and that they could not campaign there. He told them they had to leave the premises or he would take "additional measures."
38. In January 2009, SWP campaign supporters staffing a campaign table on a public sidewalk outside of a U.S. Post Office in Miami, Florida were harassed by a man who tried to start an argument at the table and insisted to Post Office employees that the table should be removed from the sidewalk.
39. In September 2011, an SWP candidate for mayor of San Francisco and the campaign director distributed campaign fliers and *The Militant* newspaper on public property outside the C&H Sugar Co. Inc. refinery in Crockett, California when three uniformed security guards told them they were not allowed to be in front of the factory and insisted that the campaigners cease and desist their distribution of campaign materials.
40. In September 2011, one week after the incident described in No. 39, above, the campaign

director and a campaign supporter were campaigning in the same spot when a uniformed security guard told them not to distribute their material there. The security guard said he had read a report of the previous week's incident and that the company's management did not want them in front of their place of business.

41. In August 2009, the SWP candidate for mayor of Minneapolis and a campaign supporter were campaigning, distributing copies of campaign literature and promoting *The Militant* newspapers on a public street outside the Dakota Premium Foods meatpacking plant in South St. Paul. Soon after they began campaigning, the head of plant security told the campaigners that their activity was prohibited and that he would call the police if they did not leave. Prior to this incident, the SWP had been campaigning in that same location since 2000 without incident.
42. In August 2012, SWP supporters in Richmond, California campaigning for the SWP presidential and vice presidential candidates, as well as two SWP congressional candidates, set up a campaign table in a strip mall in front of a Foods Co grocery store. The campaigners were immediately approached by two security guards, later accompanied by a third security guard, who told the campaigners that the table had to be taken down, despite the fact that a Foods Co assistant manager told the officers that the campaign had permission to set up a campaign table outside of their store. One of the security officers then called his supervisor, who told him that he should allow the campaign to set-up the table.
43. In August 2012, two SWP campaign supporters were campaigning for SWP candidates

James Harris for president and Maura DeLuca for vice-president on a public street in Pacheco California, when they were told by a Tesoro security guard that they could not campaign there because they were on company property. The campaign supporters stopped campaigning, and later discovered that they had in fact been on public property.

44. In January 2012, an editor for *Tire Review*, a business newspaper distributed by the management at the Cooper Tire and Rubber Company, where there was a lock out in 2011-12, falsely and intentionally mis-attributed statements from an anti-union organization to the SWP in an effort to associate the SWP with anti-union positions and drive a wedge between the SWP and the workers and their union.
45. In April 2011, at the Earth Day festival in a public park in Houston, Texas, an organizer of the event and a supporter of the incumbent Mayor shut down an SWP campaign table, where former candidate for Mayor of Houston and Governor of Texas, Amanda Ulman was distributing *The Militant* and displaying books and the SWP's political signs. This organizer threatened to call the police if the SWP did not shut down their table.

FEAR OF REPRISAL

46. In September 2012, at the Baltimore Book Fair, a young man in his early 20's decided to subscribe to *The Militant*, but as he was filling out the subscription form stopped and declined to subscribe, explaining that he was about to enter the U.S. Navy and did not want to subscribe to a socialist newspaper because he thought that doing so might cause him some problem in the Navy. He insisted that the form be torn up and that he be given the pieces to dispose of himself.

47. A former member of the SWP and current government employee – a maintenance worker for a transit company – said that she “had a government security clearance suspended” some years ago when she was a member of the Socialist Workers Party. Though she said she would have liked to have done so, she refused to be an elector for the SWP because she doesn’t “want to draw attention to myself in a way that might jeopardize my ability to get hired somewhere else.”
48. In March 2012, a teacher in Tacoma, Washington was very interested in *The Militant* newspaper and readily agreed to sign up for a subscription but ultimately declined to subscribe, saying “You know what? I just can’t have *The Militant* coming to my house now. Between my problems at work and the very conservative neighbors where I live, I think receiving this paper in the mail would add to my troubles.” She then tore up the subscription and declined to subscribe even if she were to receive the subscription in an unmarked manila envelope.
49. In September 2012, at the Sonoma County Book Fair in Santa Rosa, California, a young woman who expressed interest in the SWP’s positions declined to subscribe to *The Militant*, explaining that she feared that receiving a socialist newspaper at her home might jeopardize her application for citizenship. Later that same day, a second woman declined to subscribe to *The Militant*, stating that she feared that being put on the subscriber list might jeopardize her status as a recipient of housing through HUD.
50. In July 2012, a woman attending a rally in Miami, Florida was interested in and purchased a subscription to *The Militant*. Shortly after filling out her information and

making payment, she stated that she did not want to receive the subscription, saying that “I am applying for citizenship and do not want to be associated with a communist newspaper.”

51. In October 2011, in Queens, New York, an ex-government employee was very interested in *The Militant* newspaper but said he would not sign up for a subscription to the paper because he feared harassment if he did. He said, “I don’t want to be on your list.”
52. In September 2011, in New York, New York at the site of Occupy Wall Street in Zuccotti Park, after discussing the contents of *The Militant* newspaper with someone distributing *The Militant*, a young man declined a subscription, saying that “It sounds like a good paper, but I will not get the subscription. Just look at all the cops around here. I don’t want them to see me fill out the subscription form. I am afraid to get on a list.”
53. In October 2012, a woman at the Arab Cultural Festival in San Francisco, California talked about subscribing to *The Militant* newspaper but declined, saying “I am from Algeria. I can’t subscribe because I am afraid I will be put on an FBI list.”
54. In August 2012, at the dispatch hall of the International Longshore and Warehouse Union, Local 10 in San Francisco, California, an individual declined an offer from an SWP supporter to read *The Militant*, saying “I don’t want the FBI on my tail.”
55. In July 2012, a warehouse worker who had previously bought copies of *The Militant* newspaper and attended programs and political actions declined to become a SWP elector because he did not want “to be on any government lists.”
56. A naturalized U.S. citizen, born in Eritrea, told his co-worker at United Airlines, a SWP

supporter who sells subscriptions to *The Militant*, that he will not buy a subscription to *The Militant* or come to any Militant Labor Forums because he is afraid of losing his U.S. citizenship if he receives *The Militant* in the mail or is seen at a meeting.

57. In the San Francisco Bay Area, two coworkers of an SWP supporter, who no longer support the Democrat and Republicans parties, were looking for another political party, but were afraid to put their name on an SWP mailing list or to come to a public event to hear the Socialist Workers Party presidential candidate for fear of being targeted by the government or their employer for their interest in the SWP.

C. Analysis of City Ordinances and Municipal Codes

The instant request includes evidence of incidents occurring in seven different cities in which the police harassed or threatened arrest of SWP campaign supporters who were distributing noncommercial campaign materials in public spaces for their alleged violations of local regulations. We have reviewed the city ordinances and municipal codes for these seven locations and have determined that in at least six of the seven locations the SWP campaigners' activity was authorized by the local code and that the police had exceeded their authority. Moreover, in the one location in which there were legal provisions requiring that individuals obtain a permit before distributing political literature, the police officers' actions clearly reveal that there was an anti-SWP animus in the selective application of these code provisions.

In New York City, in one incident, New York City police told an SWP Senate candidate that he and campaign supporters could not sell the newspaper without a vendor license from New

York City. The staffer explained that she was on public property, campaigning for public office, and allowed to offer newspapers without obtaining a license, citing to New York City Administrative Code § 20-453. Nonetheless, the officer, after consulting with his superior, issued a summons for an “Unlicensed General Vendor” to the candidate, instructed her to stop selling *The Militant* newspaper, and to take down the table. *See* Ex. 21. New York City Administrative Code § 20-453 states that “it shall be lawful for a general vendor who hawks, peddles, sells or offers to sell, at retail, only newspapers, periodicals, books, pamphlets or other similar written matter ... to vend such without obtaining a license therefor.” *See* Ex. S.

In another incident in New York City, campus police informed SWP campaign supporters who had previously secured permission from the College dean to campaign at the Borough of Manhattan Community College in New York City, that they had to take their materials and leave the campus immediately because they didn’t have authorization from the dean in writing. *See* Ex. 28. There are no City University of New York regulations prohibiting distribution of political materials on campus, and, to the contrary, the City University of New York policy states that “[e]ach member of the academic community or an invited guest has the right to advocate his or her position without having to fear abuse—physical, verbal, or otherwise—from others supporting conflicting points of view.” Ex. T (Policy 6.6 (Maintenance of Public Order)).

On three separate occasions in Boston, Massachusetts, in November 2010, April 2011 and August 2012, police officers told SWP supporters with a campaign table on the street that they had to move their table because they lacked an allegedly required permit for their table. *See*

Exs. 17, 24, 26. On one of these occasions, in November 2010, the SWP supporters informed the police that no permit was required; however, the police made them take down their table nonetheless. *See* Ex. 24. Indeed, in Boston, no permit is required to distribute noncommercial materials, nor are there any other specific restrictions on the distribution of noncommercial materials. *See* Ex. U (City of Boston Municipal Code 16-12.3 (“[n]o permit shall be required nor shall this ordinance [concerning permits for the distribution of *commercial* materials] operate to affect, interfere with or in any way abridge the right of persons on the street to carry or display noncommercial show cards, placards or signs or to distribute non-commercial handbills, cards, circulars or papers other than newspapers”)). It was not until a SWP candidate informed the police that she had contacted the police department lawyer to confirm that they were authorized to distribute on the street that the officers finally backed off.

In Philadelphia, Pennsylvania, police officers harassed SWP campaign supporters, after looking campaign literature and *The Militant*, and warned “We can put you on the no-fly list. Report you to Homeland Security,” took the campaigners’ identifications back to their patrol car, temporarily, and then parked their vehicles facing the campaigners as they continued to campaign and remained parked until the campaigners ended their campaigning. *See* Ex. 16. We reviewed the Philadelphia City Code and could not locate any ordinance that would have restricted SWP campaign supporters from distributing noncommercial literature without a license.

In Berwyn, Illinois, a police officer issued a SWP campaign supporter a summons for the offense of peddling/soliciting without a license for distributing copies of *The Militant* door-to-

door and instructed him to stop going door-to-door. *See* Ex. 20. Berwyn's Code of Ordinances requires a license for "peddling, commercial soliciting or itinerant vending," for the selling or offering for sale of property for immediate delivery (peddling) or future delivery (commercial solicitation). *See* Ex. V (Berwyn, Illinois Code of Ordinances §§ 860.01, 860.02(A)). The license requirement clearly *does not* apply to noncommercial distribution of literature. Moreover, the ordinance very clearly does not require a license for "soliciting support for political...causes, not involving the solicitation of funds." *Id.* ("Other soliciting," as defined in § 860.01, not included in list of activities requiring a license as set forth in § 860.02(A)).

In Laurel, Maryland, the SWP candidate for mayor of Washington, D.C. and a campaign supporter were harassed by a police officer while distributing *The Militant* newspaper on public property. A Howard County police officer told the campaigners they had no right to be there because they were creating a traffic hazard, and told the campaigners they had to leave. *See* Ex.25 . In Laurel, no permit is required for "[t]he distribution of free samples of goods," nor is there any licensing requirement for "[a]ny person engaged in voter registration activities or partisan or nonpartisan election campaigns[.]" *See* Ex. W (Laurel, Maryland, Code of Ordinances § 8-59(3),(5)) (exemptions for Article concerning "Vending, Peddling, Soliciting").

There were two incidents in Miami, Florida. *See* Exs. 19, 23. In one, Miami Dade County police officers told a Socialist Workers Party supporter that he could not distribute the campaign literature on a public street; the SWP supporter was also ordered to put away the campaign literature, and threatened with arrest if he took out the literature again. Many other people were present distributing literature in support of other campaigns in the same area, and

none of them were subjected to the same prohibition and threat. Miami City Ordinance Sec. 39-49, specifically exempts “[v]endors who exclusively vend written matter” from any permit requirements (Miami City Ordinance Sec. 39-28). *See Ex. X.*

In the other incident, a Miami City police officer told SWP supporters distributing copies of *The Militant* newspaper as well as books about socialism on the public sidewalk that they needed a permit to vend and that if they continued their activity without one, he would arrest them. One of the SWP supporters informed the police officer that Miami City Ordinance Sec. 39-49 exempted the vending of written materials from the permit requirement; however, the police officer ignored him and forced them to leave.

There were two incidents in Chicago. *See Exs. 18, 22.* In one incident, a Chicago police officer informed a SWP candidate for governor and two campaign supporters at a campaign literature table in Daley Plaza, a public plaza in Chicago, that they were prohibited from selling books at that location, and a second police officer issued the candidate a ticket and summons for “peddling without a license” although the candidate informed the officer that they were not selling anything. The prohibition against “peddl[ing] without a license” applies only to an individual who shall “sell, offer for sale, sell and deliver, barter or exchange” any one of an enumerated list of items. *See Ex. Y* (Municipal Code of Chicago §§ 4-244-010, Section 4-244-030). The act of setting up a campaign literature table to display noncommercial literature that is not for sale clearly does not violate the relevant Chicago ordinance.

In the other incident in Chicago, police officers selectively harassed SWP campaign supporters staffing a literature table on a public sidewalk at an Occupy Chicago protest. In that

incident, a police officer told one of the SWP supporters, "I'm giving you a police order to take this table down, you were warned already and now you'll have to go to court." Although the supporter had not in fact been warned, the officer issued a summons for the offense of "storing goods on a table in the public way." The officers did not order any of the other tables to be taken down nor issue a summons to anyone staffing the other tables.

Thus, in each of the thirteen incidents, the evidence clearly shows that the police were targeting the SWP and its political message. In the incident in Chicago in which the police officer ordered an SWP supporter to take down a campaign table and issued a summons, a similar summons could have been issued against the staffers of several nearby tables. Nevertheless, the officer selectively targeted the SWP supporter. *See* Ex. 18. In New York, a police officer issued to an SWP candidate a summons for "Unlicensed General Vendor," despite being informed by the candidate of the relevant provision of the New York City Administrative Code. That code makes it "lawful for a general vendor who hawks, peddles, sells or offers to sell, at retail, only newspapers, periodicals, books, pamphlets or other similar written matter ... to vend such without obtaining a license therefor." *See* Ex. S. In Philadelphia, police officers harassed SWP campaign supporters only after reviewing campaign literature and *The Militant* commenting on their political positions. *See* Ex. 16. In Miami, a Miami Dade County police officers told a SWP supporter that he could not distribute the campaign literature on a public street; the individual was ordered to put away the campaign literature, and threatened with arrest if he took out the literature again, even though other people distributing literature in support of other campaigns in the same area were allowed to continue distributing. *See* Ex. 19. In

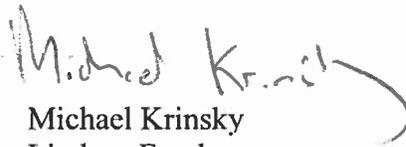
Minneapolis, Minnesota, a police officer told an SWP campaigner that the SWP's campaign table with campaign literature and copies of *The Militant* newspaper located on the side of a public sidewalk near the entrance to the Minnesota State Fair was prohibited in the vicinity of the Fair even though supporters of SWP candidates have set up campaign tables in the same location for the past several years during the time of the Minnesota State Fair without police interference. *See* Ex. 27.

CONCLUSION

There is a reasonable probability that the compelled disclosure of the Socialist Workers Party's contributors and recipients will subject them to threats, harassment or reprisals by private persons and organizations and by government officials. This is demonstrated by not only the extensive evidence of harassment since 2008 provided here, but also the pervasive fear among potential SWP supporters created by the federal government's long history of harassing the SWP, the well-known recent cases of government investigations of U.S. advocacy groups involved in activities around issues similar to those for which the SWP advocates and expanded government authority under relaxed surveillance guidelines. The showing made here of recent harassment, and of the continuing impact of the federal government's long history of harassing the SWP, is in all respects comparable to the showing recognized as sufficient by the Commission in its 2009 Opinion. The legitimate government interest in compelled disclosure is *de minimis* given the SWP's status as a minor political party, with limited electoral and financial support, that has consistently represented a definite and publicized viewpoint over many decades.

The constitutional principles established by the Supreme Court and recognized by the Commission require renewal of the exemption granted by the Commission in its 2009 Advisory Opinion and grant of an exemption from any applicable new, post-2008 reporting requirements.

Respectfully yours,

A handwritten signature in black ink that reads "Michael Krinsky". The signature is written in a cursive style with a large, sweeping flourish at the end.

Michael Krinsky
Lindsey Frank