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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 16-60-A
AGENDA ITEM
For meeting of November 17, 2016

November 10, 2016

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
Acting General Counsel

Adav Noti *AN*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Joseph P. Wenzinger *JPW*
Attorney

Subject: AO 2016-18 (Ohio Green Party) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on November 16, 2016.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2016-18

2

3 Constance Gadell-Newton

4 Robert J. Fittrakis

5 Ohio Green Party

6 1021 E. Broad Street

7 Columbus, Ohio 43205

8

9 Dear Ms. Gadell-Newton and Mr. Fittrakis:

DRAFT A

10 We are responding to your request on behalf of the Ohio Green Party (the “Committee”)
11 regarding its status as the state committee of a political party under the Federal Election
12 Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations. The
13 Commission concludes that the Committee qualifies as the state committee of a national political
14 party.

15 ***Background***

16 The facts presented in this advisory opinion are based on your advisory opinion request
17 (“AOR”) composed of letters received on August 31, 2016, and October 3, 2016, an email of
18 October 3, 2016, and public filings with the Commission.

19 In 2001, the Commission determined that the Green Party of the United States (“GPUS”)
20 was a national political party. Advisory Opinion 2001-13 (Green Party of the United States).
21 The GPUS’s Secretary, Ms. Jan Martell, has confirmed by letter that the Committee “is an
22 affiliated party of the Green Party of the United States” and “send[s] three delegates to the GPUS
23 National Committee.” AOR038.

24 Attached to the request, a letter from the Committee to Ohio Secretary of State Jon
25 Husted shows that the Committee “certif[ied] . . . the placement” of Jill Stein on the Ohio ballot
26 as a candidate for President. AOR017. Mr. Husted accepted this certification, announcing that
27 the Committee had certified Ms. Stein as Green Party candidate for the Ohio ballot. AOR019.

1 Ms. Stein received contributions or made expenditures in excess of \$5,000 according to
2 disclosure reports filed with the Commission.¹

3 Pursuant to its constitution and bylaws, the Committee engages in various political
4 activities intended to “preserve and restore viable ecosystems,” “establish social justice and
5 equity,” “foster participatory democracy,” “promote and practice nonviolence as a means of
6 conflict resolution,” and “ensure the rights of a community-based economic system for all
7 people.” AOR005. These activities include “nominat[ing] or endors[ing] candidates, ratify[ing]
8 platform positions, and initiat[ing] projects and issue campaigns.” AOR009.

9 The constitution and bylaws also set forth the organization and duties of various aspects
10 of the Committee. For example, a State Central Committee, elected by direct vote of party
11 members, prepares the platform ratification process, candidate endorsements, presidential elector
12 selection, and process for selecting GPUS delegates. AOR006, AOR035. The State Central
13 Committee also raises funds to support its activities and candidates, appoints voting special
14 advisers or observers, recruits new members, promotes Green Party values, delegates tasks to
15 subcommittees as necessary, and endorses activities. AOR006, AOR035. The constitution and
16 bylaws also contain rules regarding the timing of various meetings, including a biennial state
17 convention (AOR009); “transparency and internal democracy” (AOR009-010); and procedural
18 rules applicable to meetings (AOR010-011).

19 ***Question Presented***

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

¹ See, e.g., Jill Stein for President, FEC Report 3P at 2 (Oct. 20, 2016), <http://docquery.fec.gov/pdf/130/201610209034126130/201610209034126130.pdf> (showing net election cycle contributions totaling \$2,705,212.89).

1 ***Legal Analysis and Conclusion***

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

4 A “state committee” is an organization that, “by virtue of the bylaws of a political party . . . is
5 part of the official party structure and is responsible for the day-to-day operation of the political party
6 at the State level, . . . as determined by the Commission.” 11 C.F.R. § 100.14(a); 52 U.S.C.
7 § 30101(15). A “political party” is an “association, committee, or organization that nominates a
8 candidate for election to any federal office whose name appears on the election ballot as the
9 candidate of such association, committee, or organization.” 52 U.S.C. § 30101(16); 11 C.F.R.
10 § 100.15.

11 The determination as to whether a state party organization qualifies as a state committee of a
12 national political party turns on three elements: (1) the national party with which the state party
13 organization is affiliated must itself be a “political party;” (2) the state party organization must be
14 part of the official structure of the national party; and (3) the state party organization must be
15 responsible for the day-to-day operation of the national party at the state level. *See, e.g.*, Advisory
16 Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion 2015-01 (Green-Rainbow
17 Party); Advisory Opinion 2012-39 (Green Party of Virginia). The Commission therefore addresses
18 each of these three elements in turn.

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

20 The national party, the GPUS, must qualify as a “political party” under the Act and
21 Commission regulations. The Commission has previously determined that the GPUS qualifies as
22 a political party. Advisory Opinion 2001-13 (Green Party of the United States). The
23 Commission is aware of no factual changes that would alter that conclusion.

1 (2) *Status of the Committee as Part of the Official Structure of the Green Party of the*
2 *United States*

3 To determine whether a state party organization is part of the official structure of a
4 national party, the Commission evaluates documentation from the national party.
5 *See, e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion 2015-01
6 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia). The letter from
7 Ms. Jan Martell, Secretary of the GPUS (AOR0038), confirms that the Committee is part of the
8 official party structure of the GPUS.

9 (3) *Responsibility of the Committee for Day-to-Day Operation of the GPUS at the*
10 *State Level*

11 To determine whether a state party organization is responsible for the day-to-day
12 operations of a national party at the state level, the Commission considers: (a) whether the state
13 organization has placed a federal candidate on the ballot (thereby qualifying as a “political party”
14 under 52 U.S.C. § 30101(16)); and (b) whether the bylaws or other governing documents of the
15 state party organization indicate activity commensurate with the day-to-day functions and
16 operations of a political party at the state level. *See, e.g.*, Advisory Opinion 2016-14 (11
17 Libertarian State Committees); Advisory Opinion 2012-39 (Green Party of Virginia); Advisory
18 Opinion 2012-36 (Green Party of Connecticut).

19 (a) *Candidate on the Ballot*

20 Because an organization must place a federal candidate on the ballot to qualify as a
21 “political party,” *see* 52 U.S.C. § 30101(16); 11 C.F.R. § 100.15, an organization must obtain
22 ballot access for a federal candidate to qualify as a “state committee” of a political party. *See* 52
23 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a); Advisory Opinion 2016-14 (11 Libertarian State

1 Committees); Advisory Opinion 2015-01 (Green-Rainbow Party); Advisory Opinion 2012-39
2 (Green Party of Virginia); Advisory Opinion 2012-36 (Green Party of Connecticut).

3 The Committee certified the GPUS’s nominee for President, Jill Stein, for the Ohio
4 ballot, and the Secretary of State accepted this certification. AOR017, AOR019. Ms. Stein
5 received contributions or made expenditures in excess of \$5,000 according to disclosure reports
6 filed with the Commission. Ms. Stein therefore satisfies the Act’s definition of a “candidate.”
7 *See* 2 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

8 (b) *Day-To-Day Functions and Operations*

9 In addition to gaining ballot access for a candidate for federal office, the Committee must
10 show, in its bylaws, constitution, or other governing documents, that it is responsible for activity
11 commensurate with the day-to-day functions and operations of a political party at the state level.

12 Pursuant to its constitution and bylaws, the Committee engages in various political party
13 activities in Ohio. These activities include preparing a party platform, endorsing candidates, and
14 selecting presidential electors and GPUS delegates. AOR007, AOR037-038. The constitution
15 and bylaws provide for a biennial convention, at which candidates are nominated and endorsed.
16 AOR0009, AOR0036. The governing documents also establish the organizational structure of
17 the Committee and describe the responsibilities of the Committee’s executive organs — the State
18 Central Committee and Executive Committee — in furthering the activities of the party.
19 AOR006-007, AOR036-037.

20 These governing documents indicate activity commensurate with the day-to-day
21 functions and operations of a political party at the state level and are similar to other state party
22 rules that the Commission has found sufficient to qualify an organization for state committee
23 status. *See, e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion

1 2015-01 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia); Advisory
2 Opinion 2012-36 (Green Party of Connecticut); Advisory Opinion 2010-22 (Working Families
3 Party of Connecticut). Therefore, the Committee satisfies the requirement of being responsible
4 for the day-to-day operation of the GPUS at the state level pursuant to 52 U.S.C. § 30101(15)
5 and 11 C.F.R. § 100.14(a).

6 *Conclusion*

7 The Commission determines that the Committee qualifies as the state committee of a
8 national party committee under the Act and Commission regulations because: (1) The GPUS
9 qualifies as a political party; (2) the Committee is part of the official structure of the GPUS; and
10 (3) the Committee is responsible for the day-to-day operation of the GPUS at the state level.

11 This response constitutes an advisory opinion concerning the application of the Act and
12 Commission regulations to the specific transaction or activity set forth in your request.

13 *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts
14 or assumptions presented, and such facts or assumptions are material to a conclusion presented in
15 this advisory opinion, then the requestor may not rely on that conclusion as support for their
16 proposed activity. Any person involved in any specific transaction or activity which is
17 indistinguishable in all its material aspects from the transaction or activity with respect to which
18 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
19 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
20 affected by subsequent developments in the law including, but not limited to, statutes,
21 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
22 on the Commission's website.

23 On behalf of the Commission,

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Matthew S. Petersen
Chairman