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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 16-56-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

Joanna S. Waldstreicher *JSW*  
Attorney

Subject: AO 2016-19 (Libertarian Party of Colorado) 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 2016-19

2

3 John C. Hjersman  
4 Libertarian Party of Colorado  
5 11757 West Ken Caryl Avenue  
6 Littleton, CO 80127-3719

**DRAFT**

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8 Dear Mr. Hjersman:

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

14 ***Background***

15           The facts presented in this advisory opinion are based on your advisory opinion request  
16 (“AOR”) dated September 26, 2016, the requestor’s constitution and bylaws as incorporated by  
17 reference therein, and public filings with the Commission.

18           In 1979, the Commission determined that the Libertarian National Party (“LNP”) was a  
19 national political party. Advisory Opinion 1979-125 (National Committee of the Libertarian  
20 Party). The Libertarian National Committee, Inc. (“LNC”) is the national party committee of the  
21 LNP. The LNC’s Director of Operations, Mr. Robert S. Kraus, has confirmed by letter that the  
22 Libertarian Party of Colorado is the LNC’s “sole affiliate for the State of Colorado.” AOR003.

23           The Libertarian Party of Colorado has placed a number of candidates for federal office on  
24 the Colorado ballot for 2016, at least one of whom, Lily Tang Williams, received contributions  
25 or made expenditures in excess of \$5,000 according to disclosure reports filed with the

1 Commission. *See* Lily for U.S. Senate, FEC Report 3 at 2 (July 13, 2016) (showing net election  
2 cycle contributions totaling \$8,478).<sup>1</sup>

3 Pursuant to its constitution and bylaws, the Libertarian Party of Colorado party engages  
4 in various activities in order to “implement and give voice to libertarian principles, such as those  
5 in the Statement of Principles of the national Libertarian Party, throughout the state of  
6 Colorado.” Constitution of the Libertarian Party of Colorado (“Constitution”),<sup>2</sup> Art. II. These  
7 activities include communicating the party’s message and positions, conducting educational  
8 activities, recruiting members, nominating and promoting Libertarian candidates for public  
9 office, and promoting Libertarian legislation in Colorado. *Id.* The constitution and bylaws also  
10 set forth procedures for the election of officers and directors and their duties (*id.*, Art. V; Bylaws  
11 of the Libertarian Party of Colorado (“Bylaws”),<sup>3</sup> Art. II); timing and procedures for holding an  
12 annual party convention and nominating candidates for public office (Constitution, Arts. VII-  
13 VIII); procedures for electing delegates to the national Libertarian convention (Bylaws, Art.  
14 VII); and adoption or amendment of a state party platform (Constitution, Art. XI).

15 ***Question Presented***

16 *Does the Libertarian Party of Colorado qualify as the state committee of a political party*  
17 *within the meaning of the Act and Commission regulations?*

18 ***Legal Analysis and Conclusion***

19 Yes, the Libertarian Party of Colorado qualifies as the state committee of a political party  
20 within the meaning of the Act and Commission regulations.

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<sup>1</sup> Available at <http://docquery.fec.gov/pdf/795/201607130200216795/201607130200216795.pdf>.

<sup>2</sup> Available at <http://www.lpcolorado.org/constitution> (May 18, 2013).

<sup>3</sup> Available at <http://www.lpcolorado.org/bylaws> (March 2016).

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

8           The determination as to whether a state party organization qualifies as a state committee  
9   of a national political party turns on three elements: (1) the national party with which the state  
10   party organization is affiliated must itself be a “political party;” (2) the state party organization  
11   must be part of the official structure of the national party; and (3) the state party organization  
12   must be responsible for the day-to-day operation of the national party at the state level. *See, e.g.,*  
13   Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion 2015-01  
14   (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia). The Commission  
15   therefore addresses each of these three elements in turn.<sup>4</sup>

16           (1)   *Qualification of the Libertarian National Party as Political Party*

17           The national party, the LNP, must qualify as a “political party” under the Act and  
18   Commission regulations. The Commission has previously determined that the LNP qualifies as a  
19   political party. *See* Advisory Opinion 1979-125 (National Committee of the Libertarian Party).  
20   The Commission is aware of no factual changes that would alter that conclusion.

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<sup>4</sup>           Because the Libertarian Party of Colorado terminated its registration with the Commission after the Commission recognized it as a state committee in Advisory Opinion 2008-16 (Libertarian Party of Colorado), and because it subsequently re-registered with the Commission as a new committee, the Commission must reexamine whether the Libertarian Party of Colorado qualifies as a state committee of a political party. *See* Advisory Opinion 2015-01 (Green-Rainbow Party).

1           (2)     *Status of the Libertarian Party of Colorado as Part of the Official Structure of the*  
2                             *Libertarian National Party*

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. *See, e.g.*,  
5 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 Mr. Robert S. Kraus, Director of Operations of the LNC (AOR003), confirms that the Libertarian  
8 Party of Colorado is part of the official party structure of the LNP.

9           (3)     *Responsibility of the Libertarian Party of Colorado for Day-to-Day Operation of*  
10                            *the LNP at the 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 Libertarian Party of Colorado has placed a number of individuals seeking federal  
4 office on the Colorado general election ballot for 2016. AOR001. At least one of those  
5 individuals, Ms. Lily Tang Williams, received contributions or made expenditures in excess of  
6 \$5,000 according to disclosure reports filed with the Commission. *See, e.g.*, Lily for U.S.  
7 Senate, FEC Report 3 at 2 (July 13, 2016) (showing net election cycle contributions totaling  
8 \$8,478). Ms. Williams therefore satisfies the Act's definition of a "candidate." *See* 2 U.S.C.  
9 § 30101(2); 11 C.F.R. § 100.3(a).

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

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

15 Pursuant to its constitution and bylaws, the Libertarian Party of Colorado engages in  
16 various political party activities in Colorado. These activities include: "(a) providing leadership  
17 and direction for the Libertarian movement in Colorado; (b) communicating the message and  
18 positions of the Party; (c) entering into political information and educational activities; (d)  
19 promoting, chartering, coordinating, and supporting Party affiliates; (e) growing the Party  
20 through attracting and retaining members; (f) attracting, nominating, and promoting professional,  
21 serious Libertarian candidates for political office; [and] (g) promoting Libertarian legislation  
22 throughout Colorado." Constitution, Art. II.

1           The bylaws set forth the duties of the organization's officers, which include coordinating  
2 with candidates, recruiting members and organizing student clubs and organizations,  
3 communicating with members and the public, and developing and monitoring state legislative  
4 and policy concerns. Bylaws, Art. II, §§ 3-6, 8, 11. The constitution also provides for an annual  
5 convention, Constitution, Art. VII, at which candidates for public office are nominated and a  
6 party platform may be adopted or amended. *Id.*, Arts. VIII; XI.

7           These governing documents indicate activity commensurate with the day-to-day  
8 functions and operations of a political party at the state level and are similar to other state party  
9 rules that the Commission has found sufficient to qualify an organization for state committee  
10 status. *See, e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory  
11 Opinion 2015-01 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia);  
12 Advisory Opinion 2012-36 (Green Party of Connecticut); Advisory Opinion 2010-22 (Working  
13 Families Party of Connecticut). Therefore, the Libertarian Party of Colorado satisfies the  
14 requirement of being responsible for the day-to-day operation of the LNP at the state level  
15 pursuant to 52 U.S.C. § 30101(15) and 11 C.F.R. § 100.14(a).

#### 16           *Conclusion*

17           The Commission determines that the Libertarian Party of Colorado qualifies as the state  
18 committee of a national political party under the Act and Commission regulations because: (1)  
19 The LNP qualifies as a political party; (2) the Libertarian Party of Colorado is part of the official  
20 structure of the LNP; and (3) the Libertarian Party of Colorado is responsible for the day-to-day  
21 operation of the LNP at the state level.

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

1 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or  
2 assumptions presented, and such facts or assumptions are material to a conclusion presented in  
3 this advisory opinion, then the requestor may not rely on that conclusion as support for its  
4 proposed activity. Any person involved in any specific transaction or activity which is  
5 indistinguishable in all its material aspects from the transaction or activity with respect to which  
6 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.  
7 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be  
8 affected by subsequent developments in the law including, but not limited to, statutes,  
9 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available  
10 on the Commission's website.

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On behalf of the Commission,

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Matthew S. Petersen

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Chairman