



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 20, 2009

CERTIFIED MAIL
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ADVISORY OPINION 2009-01

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Dear Messrs. Krinsky and Frank:

We are responding to your advisory opinion request, on behalf of the Socialist Workers Party, the Socialist Workers National Campaign Committee, other Socialist Workers Party committees, and authorized committees of Federal candidates of the Socialist Workers Party (collectively “the SWP” or “SWP committees”), concerning the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to the continuation of a partial reporting exemption for the SWP. Based on the long history of systematic harassment of the SWP, and some evidence of harassment after 2002, the Commission is renewing the partial reporting exemption until December 31, 2012.

The facts presented in this advisory opinion are based on your letters received on October 31, 2008, and January 14, 2009, publicly available materials, and telephone conversations with a Commission attorney.

I. Background

A. Socialist Workers Party Litigation

The SWP was first granted a partial reporting exemption in a consent decree that resolved *Socialist Workers 1974 National Campaign Committee v. Federal Election Commission*, Civil Action No. 74-1338 (D.D.C. 1979). In that case, the SWP brought an action for declaratory, injunctive, and affirmative relief, alleging that specific disclosure sections of the Act deprived

the SWP and their supporters of their First Amendment rights because of the likelihood of harassment resulting from mandatory disclosure of contributors and vendors. The consent decree exempted the SWP from the Act's requirements to disclose: (1) the names, addresses, occupations, and principal places of business of contributors to the SWP committees; (2) other political committees or candidates to which the SWP committees made contributions; (3) lenders, endorsers, or guarantors of loans to the SWP committees; and (4) persons to whom the SWP committees made expenditures. It also, however, required the SWP to maintain records in accordance with the Act and to file reports in a timely manner. The decree extended to the end of 1984, and established a procedure for the SWP committees to apply for a renewal of these exemptions.

On July 24, 1985, the court approved an updated settlement agreement with the same requirements and partial reporting exemption.¹ The 1985 court decree extended the exemption until December 31, 1988, and again included a renewal procedure. However, the SWP missed the deadline for reapplication for the exemption.

B. Renewal of SWP's exemptions through advisory opinions

In July 1990, the SWP sought an extension of the partial reporting exemption through the advisory opinion process in lieu of obtaining a court decree. On August 21, 1990, the Commission issued Advisory Opinion 1990-13 (SWP), which granted the same exemption provided by the previous consent decrees. The advisory opinion provided that the exemption would be in effect through the next two presidential election cycles, *i.e.*, through December 31, 1996.

In response to the SWP's subsequent requests in 1996 and 2002, the Commission issued advisory opinions renewing the partial reporting exemptions, each advisory opinion covering the next six years. The Commission granted these renewals after examining the evidence presented in affidavits and other documents describing the continuing harassment of the SWP and its supporters during the six years preceding each request. *See* Advisory Opinions 2003-02 (SWP) and 1996-46 (SWP). The renewed exemption granted in 2003 also reflected amendments to the Act's reporting requirements since Advisory Opinion 1996-46.

The current exemption applies to reports covering committee activity up to December 31, 2008. Advisory Opinion 2003-02 specified that no later than sixty days prior to that date, the SWP could submit a new advisory opinion request seeking another renewal of the exemption.²

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

² A complete advisory request was received on January 14, 2009. However, SWP's initial submission of October 31, 2008, met the deadline for applying for a renewal of the partial reporting exemption.

II. Case Law

The Act requires political committees to file reports with the Commission that identify individuals and other persons who make contributions over \$200 during the calendar year or election cycle (depending upon the type of committee), or who come within various other disclosure categories listed above in reference to the consent agreements. 2 U.S.C. 434(b)(3), (5), and (6); *see also* 2 U.S.C. 431(13). However, in *Buckley v. Valeo*, 424 U.S. 1 (1976), the United States Supreme Court 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. 424 U.S. at 71-72. Reasoning that "[m]inor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim" for a reporting exemption, the Court stated that "[t]he 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." *Id.* at 74. The Supreme Court elaborated on this standard, stating:

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.

Id. at 74; *see also McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 356 n.21 (1995).

The Supreme Court reaffirmed this standard in *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87 (1982), granting the SWP an exemption from State campaign disclosure requirements. The Court noted the evidence of specific incidents of private and government hostility toward the SWP and its members within the four years preceding the trial in that case. The Court also noted the long history of Federal governmental surveillance and disruption of the SWP until at least 1976. 459 U.S. at 99-100. Noting the appellants' challenge to the relevance of evidence of government harassment "in light of recent efforts to curb official misconduct," the Supreme Court concluded that "[n]otwithstanding these efforts, the evidence suggests that hostility toward the SWP is ingrained and likely to continue." *Id.* at 101.

The Supreme Court in *Brown* also 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. The Court characterized the view that the exemption pertained only to contributors' names as "unduly narrow" and "inconsistent with the rationale for the exemption stated in *Buckley*." *Id.* at 95.

The United States Court of Appeals for the Second Circuit also applied the *Buckley* standard in exempting the campaign committee of the Communist Party presidential and vice presidential candidates from the requirements to disclose the identification of contributors and to maintain records of the names and addresses of contributors. *Federal Election Commission v. Hall-Tyner Election Campaign Committee*, 678 F.2d 416 (2d Cir. 1982), *cert. denied*, 459 U.S. 1145 (1983). The court described the applicability of the standard, stating:

[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." (Citations omitted.) Breathing space is especially important in a historical context of harassment based on political belief. Our examination of the treatment historically accorded persons identified with the Communist Party and a survey of statutes still extant reveal that the disclosure sought by the FEC would have the effect of restraining the First Amendment rights of supporters of the Committee to an extent unjustified by the minimal governmental interest in obtaining the information.

678 F.2d at 421-422.³

The Commission's agreement to the consent decrees granting the previous exemptions to the SWP committees has been based upon the long history of systematic harassment of the SWP and those associating with it and the continuation of harassment. The Commission has required only a "reasonable probability that the compelled disclosure" would result in "threats, harassment, or reprisals from either Government officials or private parties." *Buckley*, 424 U.S. at 74. In addition, the Commission has agreed to the application of this standard to both contributors and recipients of disbursements.

In Advisory Opinions 2003-02, 1996-46, and 1990-13, the Commission noted that, in granting and renewing the exemption, it considered both current and historical harassment. The 1979 Stipulation of Settlement refers to the fact that the Commission had been ordered "to develop a full factual record regarding the present nature and extent of harassment of the plaintiffs and their supporters resulting from the disclosure provisions." 1979 Stipulation of Settlement, p. 2. According to the 1985 Stipulation of Settlement, the renewal was based on evidentiary materials regarding the nature and extent of harassment during the previous five years. The renewals granted in Advisory Opinions 1990-13, 1996-46, and 2003-02 were based, in part, on the evidence of harassment since 1985, 1990, and 1997, respectively. The very nature

³ In *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003), which was issued after Advisory Opinion 2003-02, the Supreme Court addressed the challenge by plaintiffs to certain disclosure requirements for electioneering communications. In discussing the importance of such disclosure and possible exemptions to the Act's disclosure requirements, the Court reiterated the standards set forth in *Buckley* and *Brown* that have formed the legal basis for past exemptions for the SWP. *See McConnell*, 540 U.S. at 198-199.

of the periodic extensions indicates that, after a number of years, it is necessary to reassess the SWP's situation to see if the reasonable probability of harassment still exists.⁴

III. Facts Presented

A. *Status as a Minor Party*

The SWP's current request presents facts demonstrating that it has been a minor party since its founding in 1938. Despite running a presidential candidate in every election since 1948 and numerous other candidates for Federal, State and local offices, no SWP candidate has ever been elected to public office in a partisan election. Data from the 2004, 2006, and 2008 elections show very low vote totals for SWP presidential and other Federal candidates.⁵ Information presented in the request and available on the Commission's website indicates a low level of financial activity by SWP political committees.⁶ Further, unlike committees of several other minor parties, the SWP National Campaign Committee has never applied or qualified for national committee status.⁷ *See* 2 U.S.C 431(14), 11 CFR 100.13; *cf.* Advisory Opinions 2001-13 (Green Party of the United States), 1998-2 (Reform Party USA), and 1995-16 (U.S. Taxpayers Party).

B. *History of government harassment*

The SWP's request for the exemptions must be evaluated in the context of the relationship between the SWP and various Federal, State, and local law enforcement authorities, and private parties. Advisory Opinions 2003-02, 1996-46 and 1990-13 discussed the long

⁴ Similarly, the courts in *Brown* and *Hall-Tyner* rendered their decisions with reference to recent events or factors, as well as a history of harassment, *i.e.*, recent incidents of harassments against the SWP and extant statutes directed against the Communist Party.

⁵ The evidence presented, as well as information publicly available, indicates that no SWP candidate has come close to winning a Federal election in the six years since the last exemption was granted. 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, in 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. Information on non-Federal elections in 2008 indicates a similar lack of success for SWP candidates. *See* Exhibits D and S.

⁶ A declaration submitted by the treasurer of the SWP's National Campaign Committee states that, up to October 25, 2008, only 243 people had contributed to the committee in 2008, and that, in 2004, 321 people contributed to the committee. Commission records indicate that 26 persons contributed over \$200 per calendar year to the committee in 2007-2008 and that 76 persons contributed over \$200 per calendar year to the committee in 2003-2004. In anticipation of the implementation of the Honest Leadership and Open Government Act of 2007 ("HLOGA"), the committee treasurer stated that the SWP has not received any "bundled" contributions that would require disclosure as such under HLOGA, and does not foresee receiving any such contributions. *See* Exhibit E.

⁷ According to Commission records, no SWP party committee other than the National Campaign Committee was registered with the Commission during the 2006 and 2008 election cycles and only two other SWP party committees, both State committees, were registered during the 2004 cycle. During the 2008 election cycle, no authorized committee of any SWP candidate was registered with the Commission.

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

The advisory opinions also referred to statements made in affidavits submitted by Federal governmental officials in several agencies expressing the need for information about the SWP based on the officials' unfavorable perceptions of the SWP. These affidavits were submitted in connection with *Socialist Workers Party v. Attorney General*, 666 F. Supp. 621 (S.D.N.Y. 1987), in which the court granted an injunction preventing the Federal government from using, releasing, or disclosing information about the SWP that was unlawfully obtained or developed from unlawfully obtained material, except in response to a court order or a Freedom of Information Act request. The advisory opinions also discussed the statements of SWP workers and candidates and media reports, among other sources, describing incidents of private threats and acts of violence and vandalism, harassment by local police, and difficulties with other governmental authorities experienced by the SWP and those associating with it from 1985 through 2002.

C. *Current evidentiary record*

The SWP's current request includes approximately 90 exhibits attesting to incidents of harassment or intimidation, or fears expressed by potential SWP supporters. Each exhibit includes at least one sworn statement from an individual associated with the SWP, sometimes accompanied by news accounts from the SWP's newspaper, *The Militant*, or from a local newspaper, police reports, correspondence, or other materials. The statements come from SWP members, candidates, campaign workers, or supporters from different regions of the United States and are dated from late 2002 to 2008. Generally, these statements fall into four categories: (1) statements attesting to the fear that potential SWP supporters have of being identified as an SWP supporter; (2) statements and materials attesting to alleged hostility from private parties to SWP activities; (3) statements and materials attesting to alleged hostility from local government law enforcement sources to SWP activities; and (4) statements attesting to other alleged governmental intimidation. The requestor indicates that the compilation 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."

1. Fears expressed by SWP supporters

The SWP's request contains 15 statements (Exhibits 63-71 and 86-90 and Exhibit Q) by SWP candidates and campaign workers relating the concerns expressed by potential SWP supporters regarding public identification with the SWP. These include statements by the 2008

SWP presidential and vice presidential candidates and the National Campaign Committee Chair describing their experiences while campaigning and talking with potential supporters, and statements by SWP workers asking individuals to sign candidate ballot petitions and selling subscriptions to *The Militant*. Individuals expressed fear that putting their names and addresses on public petitions or on subscription lists would result in further scrutiny of them by governmental authorities such as the FBI, the CIA, the Department of Homeland Security, or immigration authorities (even if they were legal residents).

Some of the statements referred to individuals' explicitly stating a concern as to recent increased government surveillance. See Exhibits Q, 65, and 68. In addition, the sworn statement by the National Campaign Committee's Chair (Exhibit Q) indicates that he has met an increasing number of individuals who are attracted to the SWP but are afraid of public involvement for fear of "harassment or victimization by the authorities or right-wing vigilantes." The Chair states that these expressed fears were greater in 2008 than in 2004.⁸

2. Hostility from private parties

The SWP submitted approximately fifty exhibits consisting of attestations as to incidents of harassment, threats, or violence by private individuals or businesses. These exhibits are described below.

Thirteen exhibits described acts of violence or vandalism against SWP workers, property, or materials, including an incident in 2004 when a brick wrapped in incendiary material was thrown through the window of a local SWP headquarters early in the morning, setting the front part of the building on fire and causing considerable damage. See Exhibit 1. Other exhibits described other incidents of violence or vandalism, including pouring paint over an SWP vehicle; racist, anti-gay, or anti-immigrant graffiti on the windows of SWP campaign offices; a threat of imminent bodily harm to SWP campaigners; a physical assault on an SWP worker at a campaign literature table; a piece of concrete thrown through the window of an SWP office in an attempted break-in; extensive egg-throwing at an SWP headquarters on a street where no other businesses or offices were vandalized; and a former head of personnel at a company engaged in disputes with SWP personnel racing his car at an SWP campaigner. See Exhibits 3, 4, 5, 15, 27, 73, 79, 81, 82, and 83.

Several exhibits described more generalized threats of harm made in person to SWP campaigners, such as a statement by an individual to SWP supporters seeking ballot signatures that he wished to "put a bullet in every one of your heads." See Exhibit 8.

⁸ In both the October 2008 and January 2009 letters, and accompanying lettered exhibits, the SWP raises the issue of recent changes in the Attorney General's Guidelines for Domestic FBI Operations. These guidelines, which concern FBI investigations and information gathering relating to threats to national security, are less restrictive than the guidelines issued in the 1970s. The FBI has also recently issued guidance to local law enforcement agencies about "suspicious" activity to be shared with Federal authorities, including information as to "extremist organizations." The SWP notes the general public concern as to the new guidelines and practices, and expresses its concern that the recently expanded governmental authority may lead to the renewal of "the very type of practices and excesses that characterized the FBI's long history of harassment of the SWP." October 30, 2008 Letter, pp. 23-24. See also January 13, 2009 Letter, pp. 14-16, and Exhibits F, G, H, M, N, and O.

Eleven exhibits allege threatening or hostile statements made by mail or by phone. Some of these examples merely involve insulting messages containing harsh language or questioning the SWP's loyalty to the U.S. They are not out of the ordinary experience of campaigns today. However, there are more alarming allegations, such as a threatening letter containing a syringe mailed to an SWP office. There was also a declaration describing a threat by an individual to shoot SWP workers who came to his door. *See Exhibits 7 and 76.*

In four instances, individuals publicly known to be associated with the SWP were terminated from their jobs. Three of these individuals were SWP candidates for public office and one had distributed SWP campaign literature, along with SWP candidates, at the entrance to her company's parking lot after work. In three of the examples, the official basis used by the company to fire the employee was alleged work-related misconduct and did not pertain to SWP-related activities. However, the requestor relies on the circumstances presented in each exhibit to raise doubts as to these official bases and to indicate the possibility that the employee may have been terminated for SWP-related activities. *See Exhibits 20, 21, and 22.* The fourth situation entailed a firing of an SWP candidate for taking three weeks leave to campaign and to attend a youth conference in Venezuela in fulfillment of a campaign promise. The company had refused to grant such leave, and there had been a history of conflict between the company and the SWP. *See Exhibit 74.*

In one described instance, the manager of a bank that was a landlord of an office of the Militant Labor Forum (an SWP entity that sponsors weekly discussion groups on social and political issues) removed a Forum sign from the office's front door and threatened to evict the Forum months before the end of the lease, saying that the Forum was "against a lot of customers that I do business with." (This occurred during a local coal miners' strike in which the Forum was active.) Ultimately, the landlord and the tenant agreed that the tenant would vacate the premises several months before the end of the lease. *See Exhibit 23.*

Nineteen exhibits, some of which are referred to above, describe disruption of SWP workers or candidates while they were distributing SWP literature or attempting to obtain ballot petition signatures. According to the descriptions of some of these incidents, personnel of nearby businesses, including company or store security officers, forced, or attempted to force, SWP campaigners to dismantle or move their tables displaying campaign literature and other party materials, or to cease hand distribution of SWP materials while standing in a certain area. According to the exhibits, these incidents often occurred when the table or the campaigner was not on company premises, but only near it, or in shopping mall parking lots. The exhibits indicate that, in some cases, company personnel referred disparagingly to the political orientation of the literature, although it is also possible that concerns as to any political activity on or near private property may have been the impetus for the disruption in a number of situations. The exhibits also described threats by company personnel to call the local police. *See Exhibits 8, 30, 31, 33, 34, 41, 46, 47, 49, 61, 75, and 83.*

3. Relations with local law enforcement authorities

The SWP also provides sixteen exhibits describing interactions between SWP workers and local law enforcement authorities in eleven cities or towns in the Northeast, the South, and

the Midwest. These often involved police personnel or security police at public institutions who, according to the descriptions in the exhibits, forced SWP campaigners to remove tables displaying campaign materials and other SWP literature from sidewalks or to cease hand distribution of such materials. A substantial number of the described interactions involved questions as to the content of the literature being displayed or distributed, or what appeared to be hostile statements or actions by the police that may have intimidated campaigners and others interested in SWP literature. *See* Exhibit J.

For example, the statement in one exhibit described the police in Phillippi, West Virginia seizing some copies of *The Militant* from SWP workers distributing from house to house, frisking the SWP workers, and then demanding that they leave town or risk arrest. The statement in another exhibit described Toledo, Ohio police hostilely confronting SWP campaigners distributing *The Militant*, forcing them to stop, and demanding that they leave the city, asserting that the campaigners could not distribute such material door-to-door. *See* Exhibits 24 and 25.

It is not certain that animus against the SWP was the motivating factor in these situations. In some of the situations, the police contended that the SWP campaigners needed permits to have a table on the sidewalks or to distribute literature by hand. The SWP asserts that, in seven of these eleven localities, local ordinances did not require a permit and the SWP campaigners' activities were lawful. (Exhibit K includes copies of relevant ordinances from five of the seven localities.)

4. Interactions with other governmental authorities

In the current request, the SWP provides exhibits as to three alleged incidents entailing problems with government officials.⁹ The first consisted of an unannounced visit by FBI agents to the home of an SWP Congressional candidate who had just returned from a book-publicizing trip to Cuba. The candidate's statement indicates that, in questioning him, the FBI agents attempted to "bait [him] with accusations of advocating violence" and asked him other questions about his support of unionization in his workplace. The second incident involved what the SWP considered excessive fines for the posting of Militant Labor Forum event flyers on historic city lampposts. The organizers of the event claimed the posting was done without their knowledge. The third incident concerned the possible placement of an SWP activist on a no-fly list. Whether the individual was on the no-fly list is uncertain from his sworn statement, and the individual was permitted to board his flight. *See* Exhibits 19, 58, and 84.

⁹ In Advisory Opinion 1996-46, the SWP presented evidence of only a few incidents related to SWP interaction with government officials other than local police. The SWP presented only one such situation in Advisory Opinion 2003-02.

IV. Question Presented

Should the SWP, the Socialist Workers National Campaign Committee, other SWP party committees, and authorized committees of candidates of the SWP be granted a continuation of their previous partial reporting exemption?

V. Legal Analysis and Conclusions

Yes, the Commission grants a continuation of the partial reporting exemption for reports covering activity up to December 31, 2012.

In applying the standard established by the court cases and court decrees described above for deciding whether to renew the SWP's partial reporting exemption, the Commission must first determine whether the SWP continues to maintain its status as a minor party. *See Buckley*, 424 U.S. at 68-74. As evidenced by the low vote totals for SWP candidates, the lack of success in ballot access, and the small total amounts contributed to SWP committees, the Commission concludes that the SWP continues to be a minor party.¹⁰

Next, the Commission must weigh three factors in making its determination. The first factor is the history of violence or harassment, or threats of violence or harassment, directed at the SWP or its supporters by governmental authorities, including law enforcement agencies, or by private parties. The second is evidence of continuing violence, harassment, or threats directed at the SWP or its supporters by these same organizations or persons since the end of 2002. These two factors must be balanced against the third factor, which is the governmental interest in obtaining identifying information as contributors and recipients of expenditures. Where the impact of the activities of the SWP and its supporters on Federal elections is minimal because the possibility of winning an election is remote, the government's interest in obtaining such information is diminished. Advisory Opinion 2003-02; *see also Hall-Tyner*, 678 F.2d at 422.

First, as evidenced by the various court cases and the information submitted in previous advisory opinion requests, there 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.¹¹ In addition, a review of the information presented in the advisory opinion request indicates that the

¹⁰ In fact, the SWP does not even come close to the level of success necessary for a party to be defined as a "minor party" for the purposes of presidential candidate public financing. According to 26 U.S.C. 9002(7), a "minor party" is a political party whose candidate for president in the preceding presidential election received five percent or more but less than 25 percent of the popular vote.

¹¹ The Commission has consistently viewed the SWP's requests for exemption from the Act's reporting requirements in light of the "long history of governmental harassment of the SWP." Advisory Opinions 2003-02, 1996-46, and 1990-13. Past courts have described in great detail this history of violence, harassment, surveillance and disruption against the SWP. *See generally, Socialist Workers Party v. Attorney General*, 642 F.Supp. 1357 (S.D.N.Y. 1986); *Socialist Workers Party v. Attorney General*, 666 F.Supp. 621 (S.D.N.Y. 1987). The Supreme Court has previously referred to the "substantial evidence of both governmental and private hostility toward and harassment of SWP members and supporters." *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87, 98-99 (1982) (quoting the underlying district court opinion). It is against this backdrop that the present evidence presented by the requesters must be considered. *See Buckley*, 424 U.S. at 74.

SWP and persons associated with it have likely experienced harassment from private sources from the end of 2002 to the present. Although some of the alleged incidents of harassment may seem minor or subject to differing interpretations based on the circumstances, there are still a number of examples that may legitimately raise concern by those associated with the SWP, particularly when such examples are taken together, rather than viewed in isolation from one another.

There are also some allegations of continuing harassment and hostility by local police toward the SWP based on its political views. The evidence presented suggests that harassment of the SWP by other governmental entities since 1990 still exists but has abated and has been significantly lower than other forms of harassment. Nevertheless, the long history of Federal and local governmental harassment continues to have some present-day chilling effect despite the abatement of Federal governmental harassment.¹²

The Commission notes that the evidence presented does not need to demonstrate a certainty that harassment would follow a revocation of the partial reporting exemption. The standard established in the previous advisory opinions, based on the case law cited earlier, is that there only be “a reasonable probability that compelled disclosure” would result in “threats, harassment, or reprisals from either Government officials or private parties.” *Buckley*, 424 U.S. at 74. Based on its consideration of the evidence from the end of 2002 through 2008, the Commission concludes that there is a reasonable probability that contributors to, and vendors doing business with, the SWP and committees supporting SWP candidates would face threats, harassment, or reprisals if their names and information about them were disclosed.

Information provided by the SWP indicates that the SWP and committees supporting its candidates receive very small total amounts of contributions and its candidates receive very low vote totals in partisan elections. These low vote totals and dollar amounts indicate that the activities of the SWP, its candidates, and committees supporting its candidates have little, if any, impact on Federal elections. The governmental interest in obtaining the names, addresses, and other identifying information of contributors to and vendors doing business with the SWP and committees supporting SWP candidates in connection with Federal elections thus remains very low, and continues to be outweighed by the reasonable probability of threats, harassment, or reprisals resulting from such disclosure.

As a result of its finding that the SWP, the SWP’s party committees, and the authorized committees of SWP candidates have satisfied the factors established in the case law and applied in prior advisory opinions, 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. As required in previous advisory opinions, each of the SWP committees must assign a code number to each individual or entity from whom it receives one or more contributions aggregating in excess of \$200 in a calendar

¹² For example, a number of SWP personnel filed sworn statements as to the reluctance of individuals to sign petitions or subscribe to SWP literature for fear of further scrutiny by governmental authorities, and some of these individuals cited concerns as to recent increased government surveillance.

year or applicable election cycle (depending upon the type of political committee).¹³ See Advisory Opinions 2003-02 and 1996-46.

The partial reporting exemption will apply to the following sections of the Act: 2 U.S.C. 434(b)(3) (receipts of a political committee); 434(b)(5) and (6) (expenditures and disbursements by a political committee); 434(e) (reporting by political committees); 434(f) (electioneering communication disclosure); and 434(g) (independent expenditure reporting).¹⁴ Please note that the SWP and the committees supporting SWP candidates must still comply with all other reporting obligations such as electronic filing and reporting their independent expenditures while omitting the names and identifications of contributors, donors, and vendors.

Since the issuance of Advisory Opinion 2003-02, Congress has enacted the Honest Leadership and Open Government Act of 2007 (“HLOGA”) which requires disclosure of the names, addresses, and employers of lobbyists/registrants who provide bundled contributions in excess of \$15,000 (as indexed under 2 U.S.C. 441a(c)) to an authorized committee, leadership PAC, or party committee during a “covered period.” See 2 U.S.C. 434(i); 11 CFR 104.22. The SWP indicates that it has not received, and does not anticipate receiving, any such bundled contributions that would require disclosure, but nevertheless requested an exemption from this requirement. In the absence of any indication that contributions received by the SWP or committees supporting its candidates would be bundled by lobbyists/registrants and would also reach the current \$16,000 threshold for triggering the requirements of HLOGA, the Commission concludes that this question is hypothetical.

Based on the record presented, the Commission grants this partial reporting exemption to reports covering the next four years, *i.e.*, through December 31, 2012, instead of the next six years as had been granted in previous advisory opinions. Although the evidence presented by the requestor demonstrates some continued incidents of violence and harassment, those incidents appear to be of lesser magnitude than those referenced in court opinions and prior AOs granting the exemption. The interest of disclosure, however, is weighed against both the historical and present day evidence of violence and harassment. As the number of severe incidents decline, it may become more difficult for the requestor to demonstrate a “reasonable probability that compelled disclosure” will result in “threats, harassment, or reprisals from either Government

¹³ Each political committee entitled to the exemption must assign a code number to each individual or entity from whom it receives one or more contributions aggregating in excess of \$200 in a calendar year (if an unauthorized committee) or in excess of \$200 during the election cycle (if an authorized committee). That code number must be included in FEC reports filed by each committee in the same manner that full contributor identification would otherwise be disclosed. Consistent with the requirement that the committees comply with the recordkeeping provisions of the Act, the committee's records must correlate each code number with the name and other identifying data of the contributor who is represented by that code.

¹⁴ If an SWP committee does not qualify as a political committee and makes an electioneering communication that must be reported under 2 U.S.C. 434(f), it must disclose the name of the broadcasting station even though it would be exempt from disclosing names and addresses of donors and all other vendors. Additionally, the SWP's request concerns the granting of the partial exemption to both SWP party and candidate committees. The partial exemption does not extend to individual SWP supporters who, as individuals, engage in activity that might require them to file reports of their own, for example, the filing of reports of electioneering communications under 2 U.S.C. 434(f) and independent expenditures under 2 U.S.C. 434(g).

officials or private parties.” *Buckley*, 424 U.S. at 74. The shorter exemption will allow the Commission to reassess the conditions presented by requestors against the interest of disclosure at that time. At 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.

The Commission emphasizes that the SWP committees must still comply with all of the remaining requirements of the Act and Commission regulations. These committees must file reports containing the information required by 2 U.S.C. 434(b) with the exception of the information specifically exempted, and they must keep and maintain records as required under 2 U.S.C. 432 with sufficient accuracy so as to be able to provide information, otherwise exempt from disclosure, in connection with a Commission investigation. In addition to complying with the requirements of the consent decrees, the SWP committees must file all reports required under 2 U.S.C. 434(a) in a timely manner. The SWP committees must also comply with the provisions of the Act governing the organization and registration of political committees. *See, e.g.*, 2 U.S.C. 432 and 433. Finally, the SWP committees must comply with the Act's contribution limitations, prohibitions, and disclaimer provisions. 2 U.S.C. 441a, 441b, 441c, 441d, 441e, 441f, 441g, and 441i.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions and case law. All cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)
Steven T. Walther
Chairman