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Federal Election Commission
Office of General Counsel
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Dear Chairman Elliott:

This advisory opinion request is submitted on behalf of Ross Perot and the Perot Reform Committee, for whom this firm serves as counsel. The inquiries address the availability of pre-election payments to "new party" and "minor party" candidates under 11 CFR 9004 and of financing for "new party" and "minor party" conventions under 11 CFR 9008. Please note that this request is not hypothetical; Mr. Perot meets qualifications stipulated at 11 CFR 9004 and has standing to make these inquiries. See Advisory Opinion 1982-62.

Mr. Perot filed with the Commission a letter in lieu of FEC Form 2 on March 8, 1996. He did so because he could be deemed to fall within the technical definition of a "candidate" under Commission regulations. Mr. Perot was thereby also required to designate a "principal campaign committee." The Perot Reform Committee was formed and so designated by Mr. Perot and accordingly files reports with the Commission.

1. Ross Perot was a candidate for President in the 1992 election and received approximately 19% of the popular vote. His name appeared on the ballot in all 50 states; in 43 states as an independent candidate and in seven states as the candidate of a new party. We are aware that efforts are currently underway to create state Reform Parties possessing the ability to field candidates by obtaining ballot status under state law. If successful, these efforts will likely result in the formation of a Reform Party with the ability to nominate national candidates possessing ballot access rights in each of the 50 states (such a party with such ability is referred to in this letter as "the Reform Party"). The Reform Party will thereby constitute a "new party" under CFR 9002.8 (unless it satisfies the definition of a "minor party" as discussed below). Under 11 CFR 9004.2(c):

> A candidate of a new party who was a candidate for the office of President in at least 10 States in the preceding election may be eligible to receive pre-election payments if he or she received at

> least 5% but less than 25% of the total popular vote in the preceding election. The amount which a new party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the new party candidate in the preceding election.

If Mr. Perot seeks and obtains the Reform Party nomination for President and otherwise meets the applicable conditions of eligibility (including those under 11 CFR 9003.1 and 9003.2), we seek confirmation, consistent with the Commission's position in Advisory Opinion 1982-62, that Mr. Perot will be eligible for certification by the Commission under 11 CFR 9005.1(b) to receive pre-election payments for new party candidates pursuant to 11 CFR 9004.2(c).

We also seek clarification with respect to the condition of eligibility specified at 11 CFR 9003.1 regarding submission of a letter "within 14 days after such candidates have qualified to appear on the ballot in 10 or more states ...." 11 CFR 9003.1(a)(2). As noted in Mr. Perot's March 8, 1996 letter to the Commission, in more than 10 states a candidate's name must appear on independent candidate petitions because no mechanism exists under state law for a new party to obtain ballot status. Each of these states, however, permits the named candidate to be substituted with an eventual party nominee. It is anticipated that Reform Party nominees for national office will be selected by convention. Under 11 CFR 9003.1(a)(2) the Commission may extend the deadline for submission of the required letter. We seek clarification that, if Mr. Perot seeks and obtains the nomination of the Reform Party, the letter specified at 11 CFR 9003.1(a)(2), or similar requirements, will be considered timely submitted by Mr. Perot, who serves as the stand-in named candidate in more than 10 states, if submitted within 14 days of the Reform Party convention.

2. If the nominee of the Reform Party (as a "new party") is someone other than Mr. Perot, we seek clarification that that candidate would also be eligible to receive pre-election payments in an amount calculated in accordance with 11 CFR 9004.

Commission regulations appear to permit a Republican or Democratic nominee to receive pre-election grants even if the Republican or Democratic candidate did not run in a prior election for President. In 1996, for example, the 1992 Republican nominee is not a candidate, yet it is anticipated that the Commission will make pre-election grants to the Republican nominee. In this regard we note that Reform Party efforts, issues and public support are an outgrowth of Ross Perot's 1992 candidacy, and are the logical continuation of the independent candidate and new

party ballot access efforts of Mr. Perot in 1992. The nominee of the Reform Party is likely to be tied and publicly associated more closely with the issues, organization and public support of the 1992 candidacy of Mr. Perot than are the nominees of the major parties to their predecessor nominees.

Although to our knowledge the Commission did not formerly act, we believe the Commission examined favorably in 1984 this issue of applicability of 11 CFR 9004 to a continuing political effort in the context of a potential presidential candidacy of Mr. Martin Stone and his affiliation with Mr. John Anderson and Mr. Anderson's supporters following Mr. Anderson's decision not to again seek the presidency in 1984. (We understand in 1980 Mr. Anderson was on the ballot in 47 states as an independent candidate and in three states as a party candidate.)

3. We also seek confirmation from the Commission that the Reform Party would constitute a "minor party," rendering a presidential nominee of the Reform Party other than Mr. Perot eligible to receive pre-election payments pursuant to 11 CFR 9004.2(b). This is appropriate for the reasons of association and continuity between the Reform Party movement and the 1992 candidacy of Ross Perot discussed in Section 2 above. It is also appropriate because the party meets the definition of "minor party" at 11 CFR 9002.7.

Commission regulations at 11 CFR 9004 consider party ("major," "minor," or "new") candidacies but differentiate them from independent candidacies. Such a distinction is not grounded in legal realities in relation to minor and new parties. Minor and new parties rely on the aggregation of ballot access rights in 50 states to field candidates for national office. Under state ballot access laws it is a legal impossibility to obtain ballot access in all states as a party or in all states as an independent candidate. In some states only a party is permitted, legally or practically; in others, as noted above, only independent candidate petitions are permitted. All so-called "third party" candidates, including third parties that have been recognized by the Commission as National Party Committees, use a combination of party and independent candidate methods (a mix determined by what is legally required and what is less burdensome).

In 1992 Ross Perot was the candidate for President of a new political party in seven states, all but one of which political parties we understand continue to exist under state law. Each of these political parties is expected to affiliate with the Reform Party. Under 11 CFR 9002.7:

> *Minor party* means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.7, *candidate* means with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

Mr. Perot was the nominee of seven political parties in 1992. The Reform Party is an outgrowth of Mr. Perot's independent and party candidacies in that election. Accordingly, we seek confirmation that these parties from the 1992 election in conjunction with the Reform Party will constitute a "minor party" and that the presidential nominee of the Reform Party will be deemed the candidate of a minor party and thereby eligible to receive pre-election payments under 11 CFR 9004.1(b).

4. We seek clarification from the Commission that the Reform Party would be eligible for federal financing of its presidential nominating convention under 11 CFR 9008 as a "minor party" pursuant to 11 CFR 9008, or, in the alternative, because "new party" presidential nominating conventions are eligible for pre- or post-election federal financing.

Provisions at 11 CFR 9008 specifically address convention financing only of major parties and minor parties. The silence as to conventions of new parties is inconsistent with the statutory scheme and Commission position evidenced elsewhere in Subchapter E of Commission regulations, 11 CFR 9001, et seq. (which address major, minor and new parties in both pre- and post- general election financing), and in Subchapter F, 11 CFR 9031, et seq. (eligibility of new party candidates to receive matching payments for ballot access activities as analogous to major party candidate primary election activities (see Advisory Opinions 1975-44, 1983-47, 1984-11, 1984-25, 1995-45)).[1] We seek the Commission's advice that a new party's presidential nominating convention is eligible for pre-election financing if the nominee was previously a presidential candidate, and for pre- or post-election payments, provided the party has popular support in excess of 5% at the time of the convention or the nominee receives 5% or more of the

[1] The Commission's advisory position on matching payments for ballot access expenditures by named candidates does not address new parties which seek a long-term national presence and desire to select national candidates by nominating convention.

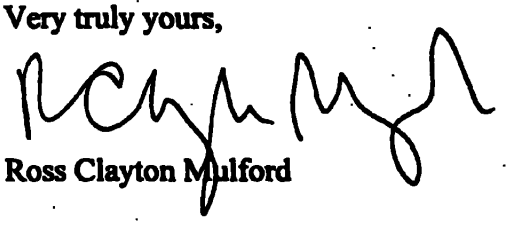
popular vote in the presidential election, respectively, all in conformity with the regulatory specifications and scheme for new parties at 11 CFR 9004.

In this regard, we note that the Democratic and Republican conventions will amount to little more than three day political commercials for the parties and their nominees who have, in effect, already been selected. Nor is 1996 atypical in this regard, since the nominees of those parties have been certainties prior to their conventions for almost 20 years. Yet these events will be paid for with $24.7 million of taxpayer money.

To the extent there is merit in taxpayer financing of these commercials for the Democratic and Republican parties, from whom a significant proportion of the population consider themselves independent, fairness requires that the Commission not exclude the conventions of new parties evidencing widespread popular support. To do otherwise will have the inevitable effect of limiting the ability of a new party to become a minor or major party and of entrenching the two major parties, a mission outside and counterproductive to the mandate of the Commission as an independent, non-partisan agency to supervise enforcement of the campaign finance laws in a fair and equitable manner.

As time is of the essence with respect to these matters, your prompt attention to this request is appreciated. Thank you for your assistance.

Very truly yours,



Ross Clayton Mulford

RCM:bjh