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FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 3, 1998

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael Marinelli
Attorney

AGENDA ITEM
For Meeting of: 3-5-98

SUBMITTED LATE

SUBJECT: OGC amendment to Draft Advisory Opinion 1998-2

Attached is a proposed amendment to the draft of the subject opinion (Agenda Document #98-22) which is to be considered by Commission at its March 5, 1998 meeting.

The changes made to the draft reflect the additional information recently received from the requester concerning the number of State Reform Party affiliates that are joined to the request. These are increased to 29. The changes, found on pages 5, 6, 8, and 9, are bolded.

Attachment

DRAFT

1
2 **ADVISORY OPINION 1998-2**

3
4 **Russell J. Verney, Chairman**
5 **Reform Party of the United States of America**
6 **P.O. Box 9**
7 **Dallas, Texas 75221**

8
9 **Dear Mr. Verney:**

10
11 **This refers to your letter dated January 12, 1998, and later supplements, requesting**
12 **an advisory opinion regarding whether the national committee of the Reform Party of the**
13 **United States of America ("the Reform Party, USA") is a "national committee" of a**
14 **political party for purposes of the Federal Election Campaign Act of 1971, as amended**
15 **("the Act"), and Commission regulations. You also request the Commission to recognize**
16 **several State Reform parties as State committees of a political party.**

17 ***FACTUAL BACKGROUND***

18 **You state that the Reform Party USA can trace its origins to 1992 and the activities**
19 **of most constituent State parties to a period beginning September, 1995, when, in**
20 **response to numerous long-standing requests from third-party advocates, efforts to**
21 **establish a new national political party began. You explain that after preliminary**
22 **organizational efforts, various State Reform party organizations, including several**
23 **philosophically aligned pre-existing state parties, joined with other interested individuals**
24 **in Long Beach, California, and Valley Forge, Pennsylvania, to nominate a Presidential**
25 **(Ross Perot) and Vice-Presidential candidate (Pat Choate) for the 1996 election.**
26 **According to public records, Mr. Perot and Mr. Choate obtained ballot access in all 50**
27 **states and received 8.4% of the vote. During the same year, various State Reform parties**
28 **also obtained ballot access for candidates for other Federal offices. Following the 1996**

1 election, the Reform Party National Organizing Committee was established in Nashville,
2 Tennessee, on January 25, 1997.¹ The first Reform Party national convention was held in
3 Kansas City, Missouri, on October 31 through November 2, 1997.

4 Besides the involvement of the Reform Party USA in electoral contests, you cite
5 various other elements of party building activity to support a claim to national committee
6 status. Among these elements are: significant voter registration and get-out-the-vote
7 activities,² the dissemination of Party information through print publications, electronic
8 resources and providing speakers,³ and the establishment of a checking account at
9 NationsBank.⁴

10 ***STATUS OF REFORM PARTY***

11 The term "national committee" is defined by the Act as "the organization which,
12 by virtue of the bylaws of a political party, is responsible for the day-to-day operation of
13 such political party at the national level, as determined by the Commission." 2 U.S.C.
14 §431(14). See also 11 CFR 100.13. The term "political party" is defined by the Act "as
15 an association, committee, or organization which nominates a candidate for election to

¹ According to the Party Constitution, included with your request, the national committee of the Reform Party USA is responsible for conducting the business and the affairs of the party between sessions of the national convention. Party Constitution, Article V, section 1. It is composed of the executive committee and three statewide delegates from each State party organization. *Id.*, section 2.

² As an example, you cite efforts in California where over 100,000 Reform party members were registered in three weeks in late 1995. You also state that over 30,000 individuals were registered into the Maine Reform Party in the same year and that there have been continued efforts in 1996, 1997 and 1998 in Delaware, Florida, Iowa, California and other states.

³ You state that the executive committee manages an Internet web-site which contains news releases, statements by Reform Party leaders, the full text of public documents of interest to Party members and others. The Reform Party USA also published a national magazine describing the 1997 convention in Kansas City, a copy of which was submitted with your request. Finally, the Party intends to establish a national newsletter. Currently, the executive committee also regularly issues press releases.

⁴ According to the Reform Party USA's 1997 year end report, the Party received \$20,272 in contributions for that reporting period and made \$2,099 in expenditures.

1 any Federal office whose name appears on the election ballot as the candidate of such
2 association, committee, or organization." 2 U.S.C. §431(16).

3 Therefore, to determine whether the Reform Party USA is eligible for national
4 committee status, the Commission must first determine whether the Party qualifies as a
5 "political party" under the Act. As indicated above, to qualify as a political party, the
6 party organization must obtain ballot access for its Federal candidates, as defined in the
7 Act. The Commission notes that Mr. Perot and Mr. Choate achieved ballot access and
8 qualified as candidates under the Act. In addition, 16 other Party candidates for Federal
9 office also achieved ballot access and filed reports indicating that each of their campaigns
10 received or expended in excess of \$5,000. Accordingly, each of them qualified as a
11 candidate under 2 U.S.C. §431(2). On this basis the Commission concludes that the
12 Reform Party USA would be a political party for purposes of the Act. See Advisory
13 Opinions 1996-35, 1995-16, 1992-44 and 1992-30.

14 The Commission has applied a number of criteria to determine whether a political
15 party or its committees have demonstrated sufficient activity on a national level to attain
16 national committee status. A party committee demonstrates that it is a national
17 committee of a political party by the nomination of candidates for various Federal offices
18 in numerous states; by engaging in certain activities on an ongoing basis (rather than with
19 respect to a particular election) such as supporting voter registration and get-out-the-vote
20 drives; and by publicizing issues of importance to the party and its adherents throughout
21 the nation. Other indicia include the holding of a national convention, the establishment
22 of a national office and the establishment of state affiliates. See Advisory Opinions

1 1996-35, 1995-16, 1992-44, 1992-30, 1988-45, 1980-131, 1980-121, 1980-96, 1980-3,
2 1978-58, 1976-95 and 1975-129.

3 A committee or political party will not qualify for national committee status if its
4 activity is focused solely on the Presidential and Vice Presidential election (Advisory
5 Opinions 1980-131 and 1978-58), or if it is limited to one state (Advisory Opinion 1976-
6 95), or if it currently has only very few Federal candidates on State ballots (Advisory
7 Opinions 1992-44 and 1988-45), or if its Presidential candidate or other candidates have
8 not qualified as candidates as defined in the Act and Commission regulations (Advisory
9 Opinions 1997-29 and 1996-35).

10 An examination of the submitted documents and information indicates that while
11 some of the Party's projects are still in the planning stage or, although planned, have yet
12 to occur, the Party has already undertaken significant party building activity of a national
13 scope. The various party registration and get-out-the vote-activities, the holding of a
14 Reform Party USA convention, as well as efforts to publicize the Party's positions,
15 indicate that the Reform Party USA is engaging in activity comparable to other national
16 party committees. See Advisory Opinions 1995-16 and 1992-30.

17 However, the most important element in determining the extent of a party
18 committee's national activity is the degree to which its successful ballot access efforts
19 extend beyond the Presidential and Vice Presidential level to other Federal races as well.
20 See Advisory Opinions 1996-35, 1995-16, 1992-44 and 1992-30. Commission records
21 and other information from public sources, indicate that 16 individuals in 8 States, in
22 several different sections of the nation, qualified as candidates under the Act and

1 achieved ballot access in 1996 as Reform Party Congressional candidates.⁵ These results
2 compare favorably with other recent national committee situations.⁶ Considering these
3 factors together, the Commission concludes that the national committee of the Reform
4 Party of the United States of America has manifested sufficient activity to qualify it as the
5 national committee of a political party for purposes of the Act and Commission
6 regulations.

7 This determination of national committee status is applicable only with
8 regard to the contribution limitations of 2 U.S.C. §441a and the national party
9 expenditures of 2 U.S.C. §441a(d). Since no specific transaction or activity relating to
10 Chapters 95 or 96 of the Internal Revenue Code of 1954 is presented, this opinion does
11 not reach any issues as to the future eligibility of the Reform Party USA's Presidential
12 candidate(s) to receive Federal matching funds under 26 U.S.C. §§9031-9042 for use in

⁵ The eight states are: Arkansas, California, Kansas, Minnesota, Pennsylvania, New York, South Carolina and Virginia. Your request indicates that an additional 11 candidates, some of them in 5 additional states, achieved ballot access. However, these did not qualify as candidates under 2 U.S.C. §431(2). Of the 16 candidates that did qualify, those in New York state did so as "fusion" candidates (candidates whose names appear with more than one party designation on a ballot). In past opinions, the Commission has concluded that candidates who run in more than one party's primary or carry several party designations only enjoy the benefit of one set of contribution limits for a single primary election. See Advisory Opinions 1994-29 and 1982-47. However, these opinions did not reach any issue concerning the effect of fusion candidates on Commission recognition of national or State Committee status. For national committee status, the issue is whether the individual in question appears as a candidate of the party (or one of its state affiliates) that is seeking national committee recognition. So long as the candidate is identified on the ballot with a designation of the national party or its affiliate that is requesting national committee status, that the individual is associated with more than one party is not relevant. Therefore, the Commission concludes that fusion candidates may be considered when reviewing a party's qualification for national committee status. Also included in the number of 1996 Reform Party candidates is a Congressional candidate in Arkansas who was previously determined to be a Reform Party, USA candidate that had also qualified as a candidate under the Act. See Advisory Opinion 1996-51. A statement from the Arkansas Reform Party of its affiliation with the National Reform Party is also included in this request.

⁶ For example, the Commission granted National Committee status to the Taxpayers Party in Advisory Opinion 1995-16 where the Party had also achieved ballot access for 14 Congressional candidates in 6 states. This opinion was prior to Advisory Opinion 1996-35 which added the additional requirement that such candidates must also qualify as candidates under the Act. Further, as was the case with the national committee of the Taxpayers Party, several affiliated State Reform Parties have names which differ to some degree from that of Reform Party. See Advisory Opinion 1995-16.

1 the primary elections, or as to any future entitlement to general election funding under 26
2 U.S.C. §§9001-9012. Similarly, this opinion does not reach the issue of any future
3 entitlement of the Reform Party, USA to receive convention financing under 26 U.S.C.
4 §9008. Those issues would be addressed in the event that the national committee and its
5 presidential candidates apply for Federal funding pursuant to the procedures in the
6 Commission regulations. 11 CFR Parts 9003, 9008 and 9033.

7 ***STATUS OF REFORM PARTY STATE AFFILIATES***

8 Your second question concerns the State party committee status of several Reform
9 Party USA State affiliates. Your request asks that the statements of affiliation and
10 support provided by 30 such affiliates be considered by the Commission.⁷ Under the Act
11 and Commission regulations, the term "State committee" means the organization which,
12 by virtue of the bylaws of a political party, is responsible for the day-to-day operation of
13 such political party at the State level, as determined by the Commission. 2 U.S.C.
14 §431(15); 11 CFR 100.14. The definition of State committee also requires the existence
15 of a political party. The Commission has considered a variety of State party
16 organizations in making these determinations. See Advisory Opinions 1997-18, 1997-7,
17 1997-3, 1996-51, 1996-43, 1996-27, 1995-49 and 1992-30. In reviewing State party

⁷ Your request identifies over 40 state affiliates (including DC) but affiliation agreements have been received for only 30 of these affiliates. These are: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Iowa, Florida, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, New Hampshire, New York, New Jersey, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Wisconsin, Vermont and the District of Columbia. Of these 30, the Commission has previously granted State committee status to the Reform Party of Arkansas. See Advisory Opinion 1996-51. The Commission has also previously confirmed the State committee status of Virginia in Advisory Opinion 1997-7. Therefore, this request will consider the 29 affiliates (excluding Arkansas) for which affiliation statements were included in the request and State committee status was not previously confirmed.

1 affiliates of entities that qualified as national committees of political parties under 2
2 U.S.C. §431(14), the Commission has looked to the existence of a State affiliate
3 agreement which "delineates activities commensurate with the day-to-day operation of [a
4 political party] on a State level," and then concluded that "[t]o the extent the relationship
5 between [a political party] and an affiliate is based on this agreement and the affiliate
6 displays evidence of activity by obtaining ballot access for both its Presidential and other
7 Federal candidates, . . . [that] particular affiliate is a State Committee of the [political
8 party]." Advisory Opinions 1997-7, 1996-27, and 1992-30⁸

9 The Constitution of the Reform Party USA, included in your request, states that
10 among the objectives of the organization is to "[n]ominate and endorse candidates for
11 President of the United States and for Vice President of the United States; [a]ssist in the
12 election of such candidates; [and] assist State Party Organizations in the election of their
13 candidates and voter education." Party Constitution, Article II. The Party Constitution
14 requires that "a State Party Organization shall be responsible for conducting all Reform
15 Party State level business and affairs in its constituent State and for providing for the
16 successful operation of a major state political party which is in keeping with the
17 Principles and Object of the [Party], the provisions of [the] Constitution." Party
18 Constitution, Article IX, section 1. State parties are also directly subject to the provisions
19 of the Party Constitution and Bylaws. Party Constitution, Article IX, section 9. Finally,
20 each affiliate agreement submitted by the individual State parties which have joined in

⁸ The Commission has also granted State party committee status to organizations that had affiliated status with national political parties that had not achieved national committee status, based on the existence of State by-laws detailing activities commensurate with the day-to-day operation of a party on the State level and the placement of at least one Congressional candidate on the ballot. See Advisory Opinions 1997-29, 1997-7, 1996-51 and 1996-43.

1 this request expressly accepts the authority of the Reform Party, USA and agrees to abide
2 by the terms of the Party Constitution. These documents and statements, taken together,
3 evidence the intentions of Reform Party State affiliates, in cooperation and affiliation
4 with the national party, to engage in activity commensurate with the day-to-day functions
5 and operations of a political party on a State level. They are consistent with the State
6 party circumstances reviewed in the past opinions. Advisory Opinions 1997-18, 1997-7,
7 1997-3, 1996-51, 1996-43, 1996-27, 1995-49 and 1992-30. Therefore, the Commission
8 concludes that the State affiliates joined in this request meet the first element.

9 As indicated above, the second element for qualifying as a State committee of a
10 political party, and an essential element for qualifying as a political party, is that the party
11 organization actually obtains ballot access for its Federal candidates. Recently, the
12 Commission granted State committee status to a State affiliate of a qualified national
13 party committee where its only Federal candidates, as defined under the Act, were the
14 Presidential and Vice Presidential candidates of the national party. See Advisory Opinion
15 1997-3. Since all of the State affiliates placed the Presidential and Vice Presidential
16 candidates of the Reform Party USA on their respective State ballots in 1996, the
17 Commission concludes that these State affiliates have also met the second element.

18 In view of the fact that both elements have been satisfied, the Commission
19 concludes that the 29 State party committees listed in this request qualify as the State
20 committees of a political party, the Reform Party, USA, under the Act and Commission
21 regulations. These committees are: the Reform Party of Alaska, the Reform Party of
22 Arizona, the Reform Party of California, the Reform Party of Colorado, the Reform
23 Party of Connecticut, the Reform Party of Delaware, the Reform Party of Idaho, the

1 Reform Party of Illinois, the Reform Party of Iowa, the Reform Party of Florida, the
2 Reform Party of Kentucky, the Reform Party of Louisiana, the Reform Party of
3 Maine, the Reform Party of Maryland, the Reform Party of Michigan, the Reform
4 Party of Mississippi, the Reform Party of New Hampshire, the Reform Party of New
5 Jersey, the Independence Party of New York, the Reform Party of North Carolina, the
6 Reform Party of Oklahoma, the Reform Party of Pennsylvania, the Reform Party of
7 Rhode Island, the Reform Party of South Carolina, the Reform Party of Tennessee,
8 the Reform Party of Texas, the Reform Party of Vermont, the Reform Party of
9 Wisconsin and the Reform Party of the District of Columbia.⁹

10 This response constitutes an advisory opinion concerning the application of the
11 Act, or regulations prescribed by the Commission, to the specific transaction or activity
12 set forth in your request. See 2 U.S.C. §437f.

13 Sincerely,

14
15
16 Joan D. Aikens
17 Chairman
18

19 Enclosure (AOs 1997-35, 1997-29, 1997-18, 1997-7, 1996-51, 1996-43, 1996-35, 1995-
20 16, 1994-29, 1992-44, 1992-30, 1982-47, 1988-45, 1980-131, 1980-121, 1980-96,
21 1980-3, 1978-58, 1976-95 and 1975-129)

⁹ The Commission notes that any person involved in a specific activity indistinguishable in all its material aspects from the activity described in an advisory opinion may rely on its conclusions. 11 CFR 112.5(a). Therefore, if a Reform State party affiliate had secured Federal candidate ballot access for at least one of its candidates, where that candidate also qualified as a candidate under the Act, and the State affiliate signs an agreement of affiliation with the National Reform Party similar those reviewed in this opinion, then that State party need not reapply to the Commission for recognition of state committee status. It may rely on the conclusion reached in this opinion. See also Advisory Opinions 1996-51, 1995-49 and 1990-30.