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June 12, 2000

By Hand Delivery

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20463

AOR 2000-18

Re: Request for Advisory Opinion on behalf of the Nader 2000
Primary Committee, Inc. (C035222)

Dear Sir or Madam:

This is a request for an Advisory Opinion, pursuant to 2 U.S.C. § 437f and 11 C.F.R. part 112, on behalf of the Nader 2000 Primary Committee, Inc. ("Committee"). The Committee is the principal campaign committee for Ralph Nader for his candidacy for the office of President of the United States. The Committee seeks a determination that the matching payment period under the Presidential Primary Matching Fund Act for Mr. Nader's candidacy will extend until August 17, 2000, the last day of the Democratic National Convention.

Statement of Relevant Facts

On February 18, 2000, Mr. Nader filed a statement of candidacy (FEC Form 2) designating the Committee as his principal campaign committee for his candidacy for the office of President. On February 23, 2000, the Committee filed a statement of organization (FEC Form 1). The Committee has received contributions and made expenditures both in excess of \$1000 for the purpose of supporting Mr. Nader's candidacy, and it has filed periodic reports detailing these contributions and expenditures in accordance with applicable requirements.

On June 7, 2000, Mr. Nader submitted a letter to the Commission seeking to become eligible to receive Presidential primary matching fund payments. The letter contained the agreements specified in 11 C.F.R. § 9033.1. and the certifications specified in 11 C.F.R. § 9033.2. On the same date, the Committee submitted a threshold submission for matching fund payments as specified in 11 C.F.R. § 9036.1.

In an effort to appear on the general ballot in all or substantially all of the states, Mr. Nader is seeking the nomination of the Green Party to appear as its candidate for President in those states where the Party or its state affiliates have attained ballot access on the basis of their prior election activities. There are fourteen such states. Mr. Nader is also working with state affiliates of the Green Party in eighteen states where the Party does not have ballot access and where the Party must petition to have its candidate for President appear on the ballot. In eighteen additional states, Mr. Nader is seeking to have his name appear on the ballot as an independent candidate through the state's petition process since this is less onerous than seeking to qualify the Green Party for the general election ballot.¹ Mr. Nader is also seeking the nomination of the United Citizens Party ("UCP") as its candidate for President. UCP has ballot access for its candidates in the State of South Carolina.

The process through which Mr. Nader will receive the nomination of the Green Party is as follows. On June 23 - 25, 2000, the Association of State Green Parties ("ASGP")² will hold a convention in Denver, Colorado for the purpose of nominating candidates for President and Vice-President. Delegations from at least 42 states are expected to attend and participate in the convention. Under the rules of the convention, in order to participate a state delegation must pledge to support the nominees chosen by the convention. State Green Parties that do not participate in the convention, however, are free to select their own nominees.

In those states where Green Parties affiliated with ASGP have attained ballot access for their candidates, nomination at the ASGP convention is effectively the last step in the nomination process, except for certain formalities mandated by state laws, as it is for candidates of the major parties. In the states where ASGP affiliates have not attained ballot access, however, the nomination process also requires the submission of petitions seeking ballot access either on behalf of the state Green Party or Mr. Nader. The petition process in at least thirty of these states will not be completed under state law until after the ASGP convention, and in six of the states, the deadline for submitting petitions is not until after the date of the Democratic National Convention. A list of these states and the deadline for submitting these petitions is attached as Exhibit A.

¹ In a number of the states where Mr. Nader is seeking to petition onto the ballot as an independent candidate, however, he may still be identified with a Green Party label.

² ASGP has not been recognized by the Federal Election Commission as a national committee of a political party within the meaning of 2 U.S.C. § 431(18) and 11 C.F.R. § 100.13. ASGP is not related to the Greens/Green Party U.S.A. whose request for a determination that it is a national committee was denied in AO 1996-35.

UCP will select its candidates for President and Vice-President at a meeting of its State Central Committee in August, 2000.

Analysis

Under the Presidential Primary Matching Fund, a candidate who is certified to receive federal matching funds may only spend these funds, as well as other contributions the candidate receives, to defray qualified campaign expenses or to repay loans or otherwise restore funds which were used to defray such expenses. 11 C.F.R. § 9034.4(a)(1). With the exception of certain winding down costs, qualified campaign expenses do not include any expenses incurred after a candidate's date of ineligibility, 11 C.F.R. § 9034.4(b)(3), which is defined as the last day of the candidate's matching payment period. 11 C.F.R. § 9033.5(c).

Section 9032.6 of the Commission's regulations sets two tests for determining the last day of a candidate's matching payment period. For a candidate seeking the nomination of a party which nominates its Presidential candidate at a national convention, the last day of the matching period is the date on which the party nominates its candidate. 11 C.F.R. § 9032.6. For a candidate seeking the nomination of a party which does not make its nomination at a national convention, the last day of the matching period is the earlier of the date the party nominates its Presidential candidate, or the last day of the last national convention held by a major party in the calendar year. 11 C.F.R. § 9032.6(b)(1)-(2). In the current federal election cycle, the last national convention of a major party is being held by the Democratic Party on August 14 - 17, 2000.

1. **Mr. Nader's Date of Ineligibility Should Be the Last Day of the Democratic National Convention Because The Deadline For Filing Party/Candidate Petitions For Him to Appear on the General Election Ballot Is After That Date in a Number of States.**

In drafting section 9032.6 of the regulations, the Commission apparently had in mind a candidate either who is seeking the nomination of a single major or minor party; the regulation does not, however, contemplate a candidate who is seeking the nomination of a party and who is also seeking ballot access through other means, including the nomination of a second party or through petitions under state law. It is a fair reading of the regulation, however, that a candidate who is seeking the nomination of a party, such as ASGP which does not have ballot access in its own name or the name of its affiliates in all of the states is seeking the nomination of a party "which does not make the nomination at a national convention" within the meaning of 11 C.F.R. § 9032.6, since the convention does not have the effect of obtaining ballot access for the party's candidates in the states where the party or the candidate must still submit petitions. This result is also supported by the definition of "election" in the Commission's regulations, which states that, for non-major party and independent candidates, the day prescribed by applicable State law as the last day to qualify for a position on the general election ballot may be designated as the primary election for such candidate. 11 C.F.R. § 100.2(c)(4)(i).

The Commission has previously recognized that, unlike major party candidates who automatically qualify for the ballot in all states upon receiving their party's nomination at the national convention, for minor party candidates the primary process does not end until the candidate is able to attain ballot access under the procedures established by each of the states. For example, in holding that a minor party presidential candidate's general election ballot access expenses qualify for matching funds, the Commission stated: "It has long been the view of the Commission that, for non-major party candidates, the process by which they satisfy the requirements of State law governing qualification for a position on the general election ballot serves purposes similar to a primary election or other nominating process." AO 1995-45. See also AO 1984-25, AO 1984-11, AO 1975-44.

The Commission's rulings allowing primary matching funds to be used for expenses in connection with a candidate's efforts to attain ballot access strongly support Mr. Nader's request to have the matching period for his election extend until the last day of the Democratic convention, since the last day for submitting petitions to qualify for the ballot is later than that date. It would make little sense for Mr. Nader to be disqualified from using matching funds to meet his ballot access expenses because the ASGP elected to hold its convention in June, when he clearly would be entitled to use these funds under the Commission's prior precedents if no ASGP convention were held at all.³

2. Mr. Nader's Date of Ineligibility Should, Alternatively, Be Based on the Date on Which the United Citizen's Party Nominates Its Candidates.

If the Commission does not determine that Mr. Nader's date of ineligibility is the last day of the Democratic National Convention by reason of the later deadlines for him to submit party and candidate petitions in a number of states, then his date of ineligibility should be, under 11 C.F.R. § 9032.6(b), the date of the United Citizen's Party convention or the last day of the Democratic Convention, whichever is earlier..

In AO 1984-25, the Commission held that the last day of the primary matching period of a candidate who was seeking the nomination of more than one minor party was the date of the later minor party convention or the date of the last major party convention, whichever was earlier. There, a candidate who was seeking the nomination of the Citizen's Party at its national convention to be held in June, was also seeking the nomination of the California Peace and

³ Because Mr. Nader must attain ballot access through the state petition process in the majority of states, the Commission need not reach the question whether the ASGP convention is a "national convention" within the meaning of 11 C.F.R. § 9032.6(a) because the ASGP has not been recognized as a national committee of a political party. See AO 1984-11 (assuming that conventions held by political party organizations which had not been recognized by the Commission as having established a national committee of a political party are not national conventions within the meaning of the regulation.)

Freedom Party at its convention to be held in mid-August . The Commission ruled that the candidate's entitlement to matching funds should not be reduced because she was seeking the nomination of both parties rather than one and, therefore, that her primary matching period would be determined under section 9032.6(b), rather than under section 9032.6(a), by the date of the second party's convention or the last date of a major party convention, whichever was earlier.

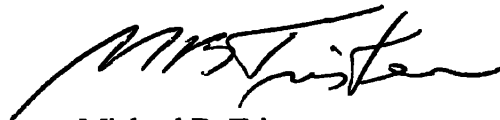
In AO 1984-11, a presidential candidate was seeking the nomination of various independent political parties that operated on the state level only; in addition the candidate was obtaining signatures on nominating petitions in approximately 29 additional states to appear on the general election ballot. The Commission held that these activities taken together would allow the candidate to certify that he is seeking the nomination of a political party in more than one state for purposes of qualifying for federal primary matching funds. In addition, the Commission held that the end of the matching payment period for the candidate would be the earlier of the last date when he would be nominated by any political party on the state level or the last day of the last national convention held by a major political party, whichever is earlier.⁴ In reaching this conclusion, the Commission referred to provisions of its regulations defining primary election for contribution limit purposes which, it stated, "recognize that for non-major party candidates the requirements of State law governing qualification for a position on the general election ballot serve purposes similar to a primary election or other nominating process."

In this case, Mr. Nader is seeking the nomination of the UCP, which is scheduled to make its nominations in August. Under AO 1984-25 and 1984-11, the end date of Mr. Nader's primary matching period should therefore be extended until the date of the UCP convention or the last day of the Democratic National Convention, whichever is earlier..

Conclusion

For the foregoing reasons, the Commission should issue an Advisory Opinion determining that the last day of the primary matching period for Mr. Nader will be the last day of the Democratic National Convention (August 17), or, if this request is not granted, the date of the UCP convention or the last day of the Democratic Convention, whichever is earlier.

Respectfully Submitted,



Michael B. Trister

⁴ Although he was seeking to attain ballot access through the petition process in a number of states, the candidate in AO 1984-11 apparently did not seek to have his matching period determined by the last day of the last national party convention on this basis, as Mr. Nader is requesting in the first part of this request.

Exhibit A

State Law Deadlines for Submission of Ballot Access Petitions for Parties and Candidates

Alabama	August 31
Arizona	June 14
Arkansas	August 1
Georgia	July 11
Idaho	August 31
Illinois	June 26
Indiana	July 17
Iowa	August 17
Kansas	July 31
Kentucky	August 30
Louisiana	September 5
Maryland	August 7
Massachusetts	July 31
Michigan	July 19
Minnesota	September 12
Mississippi	September 7
Missouri	July 31
Montana	August 1
Nebraska	August 28
Nevada	July 7
New Hampshire	August 9
North Carolina	June 30
North Dakota	September 7
Ohio	August 23
Oklahoma	July 15
Pennsylvania	August 1
Rhode Island	September 7
South Dakota	June 20
Tennessee	August 17
Texas	May 30
Utah	August 31
Vermont	September 20
Virginia	August 25
Washington	July 1
West Virginia	August 1
Wisconsin	September 5
Wyoming	August 28