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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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November 2, 2001

MEMORANDUM

**AGENDA ITEM**

For Meeting of: 11-08-01

**SUBMITTED LATE**

TO: The Commission

THROUGH: James A. Pehrkon  
Staff Director

FROM: Lawrence H. Norton  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Michael G. Marinelli  
Staff Attorney

SUBJECT: Draft AO 2001-13

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for November 8, 2001.

Attachment

1 **ADVISORY OPINION 2001-13**

2  
3 **Thomas Alan Linzey, Special Counsel**  
4 **Green Party of the United States**  
5 **2859 Scotland Road**  
6 **Chambersburg, Pennsylvania**

7  
8 **David Cobb, Senior Counsel**  
9 **Green Party of the United States**  
10 **818 West 31<sup>st</sup> Street**  
11 **Houston, Texas 77018**

**DRAFT**

12  
13 **Dear Mr. Linzey and Mr. Cobb:**

14  
15 This refers to your letter dated August 9, 2001, and later supplements, requesting an  
16 advisory opinion regarding whether the coordinating committee of the Green Party of the  
17 United States (the "National Green Party" or "Party") is a "national committee" of a  
18 political party for purposes of the Federal Election Campaign Act of 1971, as amended  
19 ("the Act"), and Commission regulations.<sup>1</sup>

20 ***FACTUAL BACKGROUND***

21 You state that the Green Party of the United States is the natural outgrowth of the  
22 Association of State Green parties (the "ASGP"). You explain that the ASGP, formed  
23 shortly after the 1996 Presidential campaign, was intended to be the vehicle through  
24 which State Green parties in the United States would form a national Green Party. At the  
25 end of July 2001, the ASGP voted to formally become the Green Party of the United  
26 States and to seek recognition of the Party's Coordinating Committee as its National  
27 Committee.<sup>2</sup>

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<sup>1</sup> According to the Party Bylaws, included with your request, the coordinating committee of the National Green Party is "the final decision making body of the Green Party." Party Bylaws, Article II, section 2. It is composed of representatives from the State parties and caucuses of under-represented groups. *Id.*

<sup>2</sup> There are two national organizations within the Green political movement, the Association of State Green Parties (now known as the Green Party of the United States) and the Greens/Green Party USA. In Advisory

1           In 2000, the ASGP mounted a Presidential campaign in the United States with  
2   Ralph Nader as its Presidential candidate and Winona LaDuke as the ASGP's candidate  
3   for Vice-President.<sup>3</sup> You state that these candidates appeared on the ballots of 46 States  
4   and garnered close to 3% of the overall national vote. During 2000, various State Green  
5   parties affiliated with the ASGP also obtained ballot access for candidates for other  
6   Federal, State and local offices. Following the ASGP's 2000 Presidential nominating  
7   convention and the 2000 general election, the ASGP established temporary offices in  
8   Washington, D.C. and Boulder, Colorado.

9           Besides the involvement of the National Green Party in electoral contests, you cite  
10   various other elements of party building activity to support a claim to national committee  
11   status. Among these elements are: significant voter registration and get-out-the-vote  
12   activities,<sup>4</sup> the dissemination of Party information through print publications and  
13   electronic resources.<sup>5</sup>

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Opinion 1996-35, the Commission determined that Greens/Green Party USA did not qualify as the national committee of a political party, in part, because Mr. Nader, its 1996 Presidential candidate, did not qualify as a candidate under the Act and Commission regulations. Following the 1996 election and the failure of Greens/Green Party USA to qualify as a national committee of a political party, eleven State party organizations met at Middleburg, Virginia to create the Association of State Green Parties. The ASGP eventually grew to have 33 State party affiliate members before the filing of this request.

<sup>3</sup> On June 24 and 25, 2000, the ASGP hosted a national nominating convention at Denver, Colorado, to nominate the Party's Presidential and Vice-Presidential candidates. See Advisory Opinion 2000-18.

<sup>4</sup> As an example, you cite the efforts in Colorado, California, Nevada, and New Mexico where, from 1996 to 2000, the party's voter registration greatly increased party membership in these States from the 1996 membership numbers. The increase in membership numbers was, for example, 45% in California and 15,577% in Nevada.

<sup>5</sup> You state that the Party manages an Internet website ([www.greenpartyus.org](http://www.greenpartyus.org)) that contains, among other information, news releases and an online version of *Green Pages* (the official publication of the Green Party of the United States). In a phone conversation with Commission staff, Mr. Linzey, co-counsel for the requester, explained that while the National Green Party plans to establish a Federal committee, it will wait until the Commission acts on the current advisory opinion request before doing so. Several affiliated State parties maintain political committees that have registered and reported with the Commission.

1           **The term "national committee" is defined by the Act as "the organization which,**  
2           **by virtue of the bylaws of a political party, is responsible for the day-to-day operation of**  
3           **such political party at the national level, as determined by the Commission." 2 U.S.C.**  
4           **§431(14). See also 11 CFR 100.13. The term "political party" is defined by the Act "as**  
5           **an association, committee, or organization which nominates a candidate for election to**  
6           **any Federal office whose name appears on the election ballot as the candidate of such**  
7           **association, committee, or organization." 2 U.S.C. §431(16).**

8           **Therefore, to determine whether the Green Party of the United States is eligible**  
9           **for national committee status, the Commission must first determine whether the Party**  
10           **qualifies as a "political party" under the Act. As indicated above, to qualify as a political**  
11           **party, the party organization must obtain ballot access for its Federal candidates, as**  
12           **defined in the Act. The Commission notes that in the 2000 elections, Mr. Nader and Ms.**  
13           **LaDuke achieved ballot access and qualified as candidates under the Act. See Advisory**  
14           **Opinions 2001-6 and 2000-18. In addition, from 1998 to 2001, 16 other Party candidates**  
15           **for Federal office also achieved ballot access and filed reports indicating that each of their**  
16           **campaigns received or expended in excess of \$5,000. Accordingly, each of them**  
17           **qualified as a candidate under 2 U.S.C. §431(2). On this basis, the Commission**  
18           **concludes that the Green Party of the United States would be a political party for**  
19           **purposes of the Act. See Advisory Opinions 1998-2, 1996-35, 1995-16, 1992-44 and**  
20           **1992-30.**

21           **The Commission has applied a number of criteria to determine whether a political**  
22           **party or its committees have demonstrated sufficient activity on a national level to attain**  
23           **national committee status. A party committee demonstrates that it operates at the national**

1 level by the nomination of candidates for various Federal offices in numerous States; by  
2 engaging in certain activities on an ongoing basis (rather than with respect to a particular  
3 election) such as supporting voter registration and get-out-the-vote drives; and by  
4 publicizing issues of importance to the party and its adherents throughout the nation.

5 Other indicia include the holding of a national convention, the establishment of a national  
6 office and the establishment of State affiliates. See Advisory Opinions 1998-2, 1996-35,  
7 1995-16, 1992-44, and 1992-30.<sup>6</sup>

8 An examination of the submitted documents and information indicates that while  
9 some of the Party's projects are still in the planning stage or, although planned, have yet  
10 to occur, the Party has already undertaken significant party building activity of a national  
11 scope. The various party registration and get-out-the vote-activities, the holding of a  
12 national convention in 2000, as well as efforts to publicize the Party's positions, indicate  
13 that the Green Party of the United States is engaging in activity comparable to other  
14 national party committees. See Advisory Opinions 1998-2, 1995-16 and 1992-30.

15 However, the most important element in determining whether a party committee  
16 operates at the national level is the degree to which its successful ballot access efforts  
17 extend beyond the Presidential and Vice-Presidential level to other Federal races as well.  
18 See Advisory Opinions 1998-2, 1996-35, 1995-16, 1992-44 and 1992-30. Commission  
19 records and other information from public sources, indicate that from 1998 to 2001, 16  
20 individuals in 8 States, in several different sections of the nation, qualified as candidates

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<sup>6</sup> A committee or political party will not qualify for national committee status if its activity is focused solely on the Presidential and Vice-Presidential election (Advisory Opinions 1980-131 and 1978-58), or if it is limited to one State (Advisory Opinion 1976-95), or if it currently has only very few Federal candidates on State ballots (Advisory Opinions 1992-44 and 1988-45), or if its Presidential candidate or other

1 under the Act and achieved ballot access, as Green Party Congressional candidates.<sup>7</sup>  
2 These results compare favorably with other recent national committee situations.<sup>8</sup>  
3 Considering these factors together, the Commission concludes that through the functions  
4 of its coordinating committee, the Green Party of the United States has manifested  
5 sufficient activity to qualify as the national committee of a political party for purposes of  
6 the Act and Commission regulations.

7 This determination of national committee status is applicable 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 Presidential candidates of the Green  
12 Party to receive Federal matching funds under 26 U.S.C. §§9031-9042 for use in the  
13 primary elections, or as to any future entitlement to general election funding under 26

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candidates have not qualified as candidates as defined in the Act and Commission regulations (Advisory Opinions 1997-29 and 1996-35).

<sup>7</sup> The eight States are Colorado, California, Pennsylvania, Michigan, New Jersey, Nevada, New Mexico, and New York. Affidavits of support have been provided by all these candidates as well as copies of affiliation agreements with the local State parties and the ASGP. Your request indicates that an additional two candidates, in two additional States, achieved ballot access. However, while these did qualify as candidates under 2 U.S.C. §431(2), they did so under State parties that were not formally affiliated with the Association of State Green Parties at the time they were candidates (or thereafter). Your request also includes affidavits of support from 13 other Federal candidates, but these individuals did not qualify as candidates under 2 U.S.C. §431(2).

The Commission notes that while most of the candidates (12 of the 16) and the representative States (6 of the 8) are from 2000, the Green Party has included candidates from 1998 and 2001. In several past advisory opinions concerning recognition of State committee status, the Commission has permitted a political party to use candidates from recent past election years to qualify for that status. See Advisory Opinions 1999-26, 1998-27 and 1998-23. The Commission finds it is likewise appropriate to do so for political party parties seeking national committee status, especially where, as is the situation of the Green Party of the United States, there is an active organization whose history spans several different election cycles.

<sup>8</sup> For example, the Commission granted national committee status to the Reform Party in Advisory Opinion 1998-2, where the Party had also achieved ballot access for 16 Congressional candidates in 8 States. In Advisory Opinion 1995-16, the Commission granted national committee status to the United States Taxpayers Party, which had achieved ballot status for 14 candidates in 6 States. The 1995 opinion was

1 U.S.C. §§9001-9012. Similarly, this opinion does not reach the issue of any future  
2 entitlement of the Green Party of the United States to receive convention financing under  
3 26 U.S.C. §9008.<sup>9</sup> Those issues would be addressed in the event that the national  
4 committee and its Presidential candidates apply for Federal funding pursuant to the  
5 procedures in the Commission regulations. 11 CFR Parts 9003, 9008 and 9033.

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

9 Sincerely,

10  
11  
12 Danny L. McDonald  
13 Chairman  
14  
15

16 Enclosures (AOs 2001-6, 2000-18, 1999-26, 1998-27, 1998-23, 1998-2, 1997-29,  
17 1996-35, 1995-16, 1992-44, 1992-30, 1988-45, 1980-131, 1978-58, and  
18 1976-95)

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prior to Advisory Opinion 1996-35, which added the additional requirement that such candidates must also qualify as candidates under the Act.

<sup>9</sup> For example, while under 26 U.S.C. §9008(b) the existence of a national committee of a political party is one requirement in eligibility for convention funding, there are other requirements as well. See 26 U.S.C. §§9008(b)(2) and 9002(7).