

RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN, P.C.
ATTORNEYS AT LAW
111 BROADWAY, ELEVENTH FLOOR
NEW YORK, NY 10008-1901

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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TELEPHONE (212) 254-1111

FACSIMILE (212) 674-4814

www.rbskl.com

VICTOR RABINOWITZ (1911-2007)
LEONARD B. BOUDIN (1912-1989)

MICHAEL KRINSKY
ERIC M. LIEBERMAN
DAVID B. GOLDSTEIN
CHRISTOPHER J. KLATELL

LINDSEY FRANK

COUNSEL

LEONARD I WEINGLASS
DEBRA EVENSON
TERRY GROSS
CRAIG KAPLAN

MICHAEL KRINSKY
212 254 1111 Ext. 102
mkrinsky@rbskl.com

October 30, 2008

By Federal Express

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

AOR 2009-01

Dear Commissioners:

On behalf of our clients, the Socialist Workers Party, the Socialist Workers National Campaign Committee, and committees supporting candidates of the Socialist Workers Party, we hereby request an advisory opinion pursuant to 2 U.S.C. § 437f and 11 C.F.R. § 112.1 that the Socialist Workers Party and the committees supporting candidates of the Socialist Workers Party (hereinafter collectively, for convenience, "SWP"), continue to be entitled to the same exemptions from reporting and disclosure requirements of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, *et seq.* granted by the FEC in its 2003 Advisory Opinion, as well as to exemptions from any new, post-2002 reporting and disclosure requirements that might otherwise be applicable.

In its 2003 Advisory Opinion, 2003-02 (hereinafter "2003 AO"), the Commission granted exemption from the FECA's provisions requiring, *inter alia*, disclosure of the names and

residential addresses, occupations, and employers of contributors to SWP committees (§ 434(b)(3)(A)); political, authorized, or affiliated committees making contributions or transfers to the reporting committee (§ 434(b)(3)(B), (C), (D)); lenders, guarantors, or endorsers of loans to the reporting committee (§ 434(b)(3)(E)); persons providing rebates, refunds, or other offsets to operating expenditures to the reporting committee (§ 434(b)(3)(F)); persons providing any dividend, interest, or other receipt to the reporting committee (§ 434(b)(3)(G)); and persons to whom expenditures, loans, loan repayments, disbursements, or contribution refunds or other offsets or committees to which expenditures, transfers, contributions, disbursements, or loans have been made (§ 434(b)(5),(6)), as well as exemption from the provisions of the FECA requiring submission and publication of electronic forms of reports (§ 434(a)(11)(B) and § 434(a)(12)); of receipts and disbursements by political committees (§ 434(e)); electioneering communication disclosure (§ 434(f)); and independent expenditure reporting (§ 434(g)). *2003 AO* at 10-11.

The Commission has continuously granted these and comparable exemptions to the SWP's campaign committees since 1979. Copies of the Commission's 2003 Advisory Opinion (downloaded from the FEC web site) and its 1996 Advisory Opinion (downloaded from the FEC web site) (hereinafter, "1996 Opinion") are attached as Exhibits A and B, respectively, to this letter request for the Commission's convenience.

The FECA was amended in 2005, 2006 and 2007. Insofar as these new amendments take effect in this reporting period and may require the SWP to disclose the names of its contributors

and vendors, SWP requests exemption from these requirements on the basis of the same showing made here to support the other requested exemptions.¹

Paralleling the SWP's prior submissions, the instant submission addresses the following:

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¹ The revisions to 2 U.S.C. § 434 contained in Section 204 of The Honest Leadership and Open Government Act of 2007 require disclosure of the names of certain individuals who provide two or more "bundled" contributions to a committee, including a party committee. The Commission is then charged with making this information publicly available. While the SWP has not received any "bundled" contributions that would require disclosure, and does not foresee receiving any such contributions, Ex. E, Declaration of Lea Sherman, it does maintain it is entitled to an exemption from this requirement as well.

I. Applicable Law and Prior Determinations

A. The Instant Request Is Timely

The 2003 Opinion granted exemptions to the SWP through December 31, 2008. 2003

AO at 11. It further provided that:

[a]t least sixty days prior to December 31, 2008, 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 2002, or the lack thereof, and will make a decision at that time as to the renewal.

Id. (emphasis added).

Accordingly, the advisory opinion request seeking a renewal of the exemption must be filed by November 1, 2008, and this request is timely filed.

B. The Commission's Previous Advisory Opinions Exempting the SWP

An exemption from the FECA reporting requirements for the SWP was first provided under a 1979 consent decree, which resolved *Socialist Workers 1974 National Campaign Committee v. Federal Election Commission*, Civ. A. No. 74-1338 (D.D.C.). The consent decree "exempted [the] committees from the provisions requiring the disclosure of: 1) the names, addresses, occupations, and principal places of business of contributors to SWP committees; 2) political committees or candidates supported by SWP committees; 3) lenders, endorsers or guarantors of loans to the SWP committees; and 4) persons to whom the SWP committees made expenditures." 2003 AO at 2.

The exemptions were renewed in an updated settlement agreement approved by the court on July 24, 1985, and in an advisory opinion issued by the Commission in 1990. The 1990

advisory opinion “granted the same exemption provided for in the previous consent decrees,” *2003 AO* at 2, as did the 1996 Opinion and the 2003 Opinion. *1996 AO* at 9 (“[t]he Commission...grants the committees supporting the candidates of the SWP the exemption provided for in the consent agreements and in Advisory Opinion 1990-13.”); *2003 AO* at 10 (“the Commission grants SWP and the committees supporting SWP candidates a further continuation of the partial reporting exemption provided for in the consent agreements as continued by Advisory Opinions 1990-13, and 1996-46.”) Specifically, the SWP was exempted from filing “[r]eports that identify individuals and other persons who make contributions over \$200, or who come within various other disclosure categories listed above in reference to the consent agreements.” *1996 AO* at 2, citing 2 U.S.C. §§ 434(b)(3), 434(b)(5), and 434(b)(6).

In its 1996 Advisory Opinion, the Commission imposed a requirement that “each committee entitled to the exemption should assign a code number to each individual or entity from whom it receives in aggregate in excess of \$200 in a calendar year” and should include that code number in its FEC filings. *1996 AO* at 7. In its 2003 Advisory Opinion, the Commission did the same. *2003 AO* at 10 & n.9.

The showing made here requires renewal of the SWP’s exemptions for the same reasons found compelling by the FEC in its prior opinions.

C. The SWP’s Post-2002 State and Local Exemptions

Support for the instant request is provided by city and state election authorities’ post-2002 acknowledgment of SWP’s exemption from local reporting and disclosure requirements

whenever the SWP has run a candidate.² In an August 2005 opinion, Ex. C hereto, the Seattle Ethics & Election Commission granted the Socialist Workers Party and Chris Hoepfner, then the Socialist Workers Party candidate for Mayor of Seattle, an exemption. The Seattle Commission found that “SWP members have been subject to recent threats and harassment by private persons in other areas of the country because of the viewpoints for which the party is known....” and that “[t]he facts . . . lead the Commission to find Applicants have shown a reasonable probability that the compelled disclosure of the Campaign’s contributors’ and vendors’ names will subject the contributors and vendors to threats, harassment, or reprisals from either government officials or private entities.” City of Seattle Opinion at 2-3. The Seattle Commission noted in particular the September 2004 firebombing of a SWP campaign office in Hazleton, Pennsylvania, and menacing communications received in SWP campaign headquarters in San Francisco, California during 2004. Both of these incidents are relied upon in this request.

The Commission concluded that “The Socialist Workers Party’s status as a minority political party, and Chris Hoepfner’s public association therewith, supports the legal presumption identified in *Buckley v. Valeo*, 424 U.S. 1, 46 L.Ed.2d 659, 96 S.Ct. 612 (1976), that the reasonable probability of threats, harassment and reprisals to [Hoepfner’s] contributors and

2 The SWP has run candidates in the states of Alabama, California, Florida, Georgia, Illinois, Iowa, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Texas and Utah, and in the municipalities of Atlanta, Georgia; Birmingham, Alabama; Boston, Massachusetts; Cleveland, Ohio; Des Moines, Iowa; Hazleton, Pennsylvania; Houston, Texas; Los Angeles and San Francisco, California; Miami, Florida; Newark, New Jersey; New York, New York; Philadelphia and Pittsburgh, Pennsylvania; St. Paul, Minnesota; Seattle, Washington; and Washington, D.C.. Ex. D, Declaration of John Studer.

vendors would adversely impact rights of association and advocacy of dissident views under the First Amendment of the United States Constitution,” requiring an exemption. *Id.* at 3.

D. Constitutional Principles Requiring Exemption and their Application to the SWP by the Courts

In its 2003 Opinion, the Commission found, upon a record that is comparable to that presented here, that exemption from the reporting and disclosure requirements of the Act was constitutionally required under the Supreme Court's decisions in *Buckley v. Valeo*, 424 U.S. 1 (1976) and *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87 (1982). The Commission 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 insubstantial interest in disclosure by that entity.” 2003 AO at 3. The Commission considered various incidents demonstrating continuing harassment of the SWP, its members, and affiliates, and took into account the long history of governmental harassment that began in 1941 with the FBI's generalized investigation of the SWP and continued unabated for at least 35 years. Applying *Buckley* and *Socialist Workers*, the Commission granted an exemption from the disclosure requirements of the Act.

The fundamental constitutional principle recognized in *Buckley v. Valeo* and *Brown v. Socialist Workers '74 Campaign Committee* is that the “First Amendment prohibits a State from compelling disclosure by a minor party that will subject those persons identified to the reasonable probability of threats, harassment, or reprisals,” *Socialist Workers*, 459 U.S. at 101. In *Buckley*, the Supreme Court recognized that the requirements of the Federal Election

Campaign Act as applied to minor parties and independent candidates in particular may under certain circumstances be unconstitutional because of the danger of significant infringement of First Amendment rights. *Id.* at 71. The Court recognized that “the governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election.” *Id.* at 70. Additionally, the Court noted that minor parties are unlike the major political parties because they “usually represent definite and publicized viewpoints, [thus] there may be less need to inform the voters of the interests that specific candidates represent.” *Id.*

The Court, while refusing to endorse a blanket exemption for all minor parties, held that particular minor parties might present circumstances similar “to those before the Court in *NAACP v. Alabama* [357 U.S. 449 (1958)] and *Bates [v. Little Rock]*, 361 U.S. 516 (1960)], where the threat to the exercise of First Amendment rights is so serious and the state interest so insubstantial that the Act’s requirements cannot be constitutionally applied.” *Buckley*, 424 U.S. at 71. As an illustration of such a case, the Court referred to *Doe v. Martin*, 404 F. Supp. 753 (D.D.C. 1975) (three judge court), which concerned a branch of the Socialist Workers Party.³

³ The *Martin* case, cited with approval by the Supreme Court, concerned the constitutionality of portions of the 1974 District of Columbia Campaign Finance Reform and Conflict of Interest Act, Pub. L. 93-376, 88 Stat. 446, requiring, *inter alia*, every political committee to keep records showing the name, address, and place of business of contributors of \$10 or more, the designation of a depository bank through which the political committee will conduct all of its financial business, and the filing of publicly available reports listing the name, address, and place of business of each contributor of \$50 or more, as well as civil penalties for non-compliance. *See Doe v. Martin*, 404 F. Supp. at 755 n.1. In *Martin*, the plaintiffs asserted that the name, address, and places of employment of those supporting the SWP “will be noted by the FBI and others and that inquiries or other detrimental social pressures will ensue affecting employment and privacy.” *Id.* at 755. The court had before it affidavits showing that SWP members had been harassed by government agencies and others, and also the findings of the Minnesota Ethics Commission exempting the Minnesota Socialist

In *McIntyre v. Ohio Elections Comm.*, 514 U.S. 334 (1995), the Supreme Court held that an Ohio statute prohibiting distribution of anonymous campaign literature violated the First Amendment. There, the Court reiterated the principle that FECA, while facially constitutional, is not constitutional in all of its applications. *Id.* at 1524 n.21. By way of illustration and example, the Court approvingly cited and quoted *Buckley v. Valeo* as “exempting minor parties from disclosure requirements if they can show 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” and *Brown v. Socialist Workers ’74 Campaign Committee* as “holding Ohio disclosure requirements unconstitutional as applied to a minor political party which historically has been the object of harassment by government officials and private parties.” *Id.* (internal quotations omitted).

As the Commission has recognized, the Court found in *Brown v. Socialist Workers ’74 Campaign Committee (Ohio)* that the SWP had met the *Buckley* standard and “grant[ed] the SWP an exemption from state campaign disclosure requirements.” 2003 AO at 3. In *Socialist Workers*, the Court found that:

[t]he District Court properly concluded that the evidence of private and Government hostility toward the SWP and its members establishes a reasonable probability that disclosing the names of contributors and recipients will subject them to threats, harassment and reprisals. There were numerous instances of recent harassment of the SWP both in Ohio and in other States. There was also considerable evidence of past Government harassment. Appellants challenge the relevance of this evidence of Government

Workers 1974 Campaign Committee from the disclosure requirements of the Minnesota Ethics in Government Act of 1974. *Id.* at 756-57 n.4.

harassment in light of recent efforts to curb official misconduct. Notwithstanding these efforts, the evidence suggests that hostility toward the SWP is ingrained and likely to continue.

459 U.S. at 100-01.

The Commission also noted that *Socialist Workers* “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.” *2003 AO* at 4 (citing *Socialist Workers*, 459 U.S. at 95). The Commission has recognized that the *Buckley* standard applies “to both contributors and recipients of disbursements.” *2003 AO* at 5.

In applying the *Buckley* – *Socialist Workers* standards to the SWP, the Commission has taken note of the admonitions of the Second Circuit in *Federal Election Commission v. Hall-Tyner Election Campaign Committee*, 678 F.2d 416 (2d Cir. 1982), *cert. denied*, 459 U.S. 1145 (1983), a case involving the Communist Party. *2003 AO* at 4. The Commission quoted with approval the Second Circuit’s statement that:

[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.' [internal citations omitted]. Breathing space is especially important in a historical context of harassment based on political belief.

2003 AO at 4, quoting *Hall-Tyner*, 678 F.2d at 421-22 (emphasis added).

The Commission went on to quote as applicable here what the Second Circuit ruled as to the Communist Party: that, in light of “the treatment historically accorded persons identified with the Communist Party” and the statutes purporting to subject Communist Party members to civil and criminal liability, the minimal government interest in disclosure could not justify application of the FECA’s requirements. *Hall-Tyner*, 768 F.2d. at 422.

The Commission has recognized that *Buckley*, *Socialist Workers*, and *Hall-Tyner* entitle the SWP to exemptions. 2003 AO at 4. Moreover, the Commission has recognized that it remains the case that “hostility toward the SWP is ingrained and likely to continue.” 2003 AO at 4 (quoting *Socialist Workers*, 459 U.S. at 101).

Subsequent to the Commission’s 2003 Advisory Opinion, the Supreme Court, in the course of holding the disclosure requirements of 2 U.S.C. § 441-a1 unconstitutional, reaffirmed in *Davis v. Federal Election Commission*, 554 U.S. ___, 128 S.Ct. 2759 (2008), the central premise of *Buckley*: that “compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment,” and that therefore “disclosure requirements, including requirements governing independent expenditures made to further individuals’ political speech” can only survive constitutional scrutiny if there is “a ‘relevant correlation’ or ‘substantial relation’ between the governmental interest and the information required to be disclosed.” *Id.* at 2774-75 (quoting *Buckley*, 424 U.S. at 64, 75). In other words, “the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights,” *id.* It is precisely this test that requires continuing exemption of the SWP from FECA’s disclosure requirements.

E. The Required Showing: "Reasonable Probability" of Threats, Harassment or Reprisals

As the Commission recognized in its 2003 Opinion, 2003 AO at 3, the required showing that a minor political party must make to qualify for an exemption under *Buckley* is as follows:

Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The 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*. . . . 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.

424 U.S. at 74 (emphasis added).

In *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998), the Texas Supreme Court considered what quantum of evidence met the *Buckley* standard. Plaintiffs offered evidence that "individuals opposed to BACALA's agenda had boycotted the business establishments of persons affiliated with BACALA and encouraged others to do the same" and that others would not make contributions to BACALA if they were identified. The Court found that although the harassment was not as severe as that in *Brown v. Socialist Workers*, a "factual record of violent past harassment" was not necessary to meet the *Buckley* standard. *Id.* at 377.

The Texas Supreme Court stated: :

In *Brown*, for example, the campaign committee introduced evidence of harassment including threatening phone calls, hate mail, destruction of property, and physical violence. We agree with the taxpayers that the threat to BACALA is not as severe as that demonstrated in cases such as *Brown* or NAACP. However, such a *factual record of violent past harassment is not the only situation in which courts have recognized a potential infringement on an association's First*

Amendment rights. Local 1814, Int'l Longshoremen's Assoc. v. Waterfront Comm'n of New York Harbor, 667 F.2d 267, 271 (2d Cir.1981); *see also Community-Service Broadcasting of Mid-America, Inc. v. Federal Communications Comm'n*, 593 F.2d 1102, 1118 (D.C.Cir.1978) (“The absence of such concrete evidence [of harassment], however, does not mandate dismissal of the claim out of hand; rather it is the task of the court to evaluate the likelihood of any chilling effect....”).

Id. (emphasis added).

The Court then discussed what types of showings might be sufficient:

In *Local 1814*, the court found it sufficient that longshoremen contributors would perceive a connection between contributing to a political fund and being called before the Waterfront Commission and would therefore discontinue their contributions. *Local 1814*, 667 F.2d at 272 [additional internal citation omitted]. And in *Pollard v. Roberts*, the Supreme Court affirmed the district court's recognition of the potential infringement on First Amendment rights that could result from political and economic reprisals, even though no factual showing of such reprisals had been made:

While there is no evidence of record in this case that any individuals have as yet been subjected to reprisals on account of the contributions in question, *it would be naive not to recognize that the disclosure of the identities of contributors ... would subject at least some of them to potential economic or political reprisals of greater or lesser severity....* Disclosure or threat of disclosure well may tend to discourage both membership and contributions thus producing financial and political injury to the party affected.

Pollard v. Roberts, 283 F.Supp. 248, 258 (E.D.Ark.), *aff'd. per curiam*, 393 U.S. 14 (1968).

In sum, BACALA has offered factual, non-speculative evidence of economic and political reprisals against itself and its contributors. This evidence is sufficient to satisfy its burden of proof.

Id. (emphasis added).

In *McConnell v. Federal Election Commission*, 540 U.S. 93, 198-99 (2003), the Supreme Court reiterated the standard set forth in *Buckley* and *Socialist Workers* pursuant to which the

SWP consistently has been exempted from FECA's disclosure requirements. In pointed contrast to the plaintiffs in *McConnell*, who offered only conclusory or second-hand evidence of harassment and threat, the SWP has again demonstrated the requisite "reasonable probability" of harm, harassment and threat to SWP contributors and vendors that constitutionally compels exemption. *See McConnell*, 540 U.S. at 198-99.

II. The SWP Remains a Minor Political Party

The Court in *Buckley* found that "the governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election." 424 U.S. at 70. Minor parties are unlike the major political parties because they "usually represent definite and publicized viewpoints, [thus] there may be less need to inform the voters of the interests that specific candidates represent." *Id.* Additionally, because minor party candidates are unlikely in the foreseeable future to win an election, contributors do not have "a reasonable expectation of exacting a *quid pro quo* from a current or potential elected official" and that therefore the governmental interest "in providing the FEC with data...is not sufficiently compelling to justify the injury resulting to important First Amendment rights." *Federal Election Commission v. Hall-Tyner*, 524 F.Supp. 955, 961 (S.D.N.Y. 1981), *aff'd* 678 F.2d 416 (2d. Cir. 1982) (Communist Party candidates could not in the foreseeable future have significant impact on election, therefore contributors did not have reasonable expectation of exacting *quid pro quo*).

In its prior Advisory Opinions, the Commission has recognized SWP's status as a minor political party for purposes of constitutional analysis and exemption from FECA's reporting and

disclosure requirements. Dispositively, the current submission is comparable to the factual submission that this Commission previously found sufficient to justify SWP's status as a minor political party in 2003. No SWP candidate has come close to winning an election in the six years since the last exemption was granted. Ex. D, Declaration of John Studer; 2003 AO at 5 & n.6. SWP candidates for U.S. President received 10,791 votes nationwide in 2004. Ex. D; 2003 AO at 5 n.6 ("SWP candidates for U.S. President received 8,746 votes nationwide in 1996 and 10,644 votes nationwide in 2000."). Further, no SWP candidates on the ballot for U.S. Senate or the House of Representatives received more than 15,000 votes in any election during that period, with the majority (seven of nine candidates) receiving less than 4,000 votes. Ex. D; 2003 AO at 5 n.6.

Additionally, a total of 341 people nationwide contributed funds to the Socialist Workers National Campaign Committee for the 2008 election, and 321 people nationwide contributed funds to the 2004 Committee. By comparison, there were *slightly more* – 354 – nationwide contributors to SWP election committees in the 2000 election. 2003 AO at 5 n.6. In 2008, there were only *three* contributions *nationwide* to the committee of over \$300 and only seventeen such contributions in 2004. Ex. E, Declaration of Lea Sherman.

Thus, the levels of electoral and financial support of the SWP and its chances of success at the polls are such that the governmental interest in reporting and disclosure is *de minimis*.

III. The SWP's Long History of Systematic Harassment

Before turning to recent harassment, we discuss the extraordinary history of government persecution of the SWP – its long duration, exceptional intensity, and gross illegality, all as

determined by the federal courts⁴ and by Congress.⁵ As the Commission explicitly found in its 2003 opinion, this history of harassment is an important factor favoring exemption:

Commission 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. . . . [T]here is a long history of threats, violence, and harassment against the SWP and its supporters by Federal, state, or local law enforcement agencies and private parties. There is a sufficient record to establish that this history continues to have a chilling effect on possible membership in or association with SWP.

2003 AO at 4, 9. The Commission further noted that the 1990 Opinion also considered “*both* ‘present’ and historical harassment” in renewing the exemption. 2003 AO at 5 (emphasis added).

In its previous opinions, 2003 AO at 6, 1996 Opinion at 3-5; 1990 Opinion at 11,634-35, the Commission has described some of this extraordinary history of federal misconduct and animus. While there is no need to establish once again the facts already found by the Commission, we do believe it important to summarize here again that prior showing, lest the full force of what transpired be lost. Given the intensity, duration, and pervasiveness of government persecution, it is hardly surprising that the history of FBI disruption (“COINTELPRO”), warrantless burglaries, warrantless wiretaps, informant penetration, and the like still – as

⁴ *Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357 (S.D.N.Y. 1986).

⁵ Sen. Rep. No. 94-755, Senate Select Committee to Study Governmental Operations With Respect to Intelligence Activities, Book II, Intelligence Activities and the Rights of Americans, and Book III, Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans.

demonstrated below – intimidates and hampers the ability of the SWP to solicit contributions and to engage in educational and political activities.

Beginning in 1941, the Federal Bureau of Investigation began a generalized investigation of the SWP which was to last for at least the next 35 years. *Socialist Workers Party v. Attorney General*, 642 F. Supp. 1357 (S.D.N.Y. 1986).⁶ The investigation began in roughly the same time period that 28 supporters of the SWP were prosecuted and convicted for conspiring to advocate the violent overthrow of the government under the Smith Act, 18 U.S.C. § 2385. *Dunne v. United States*, 138 F.2d 137 (8th Cir. 1943), *cert. denied*, 320 U.S. 790 (1943).

In the course of its investigation, the FBI amassed over 8 million documents. Between the years 1960 and 1976, the FBI employed approximately 1,300 informers, of whom approximately 300 became or were supporters of the SWP, and paid over \$1.6 million to the informers alone. The informers routinely and regularly reported upon the lawful political activities, discussions, and debates of the SWP as well as reported the names, addresses, descriptions and places of employment of supporters and their families. The informers reported, again on a regular basis, a host of personal information including information on marital or cohabitational status, marital strife, health, travel plans and personal habits.

⁶ The facts concerning the government's generalized investigation of the Socialist Workers Party are drawn from this decision unless otherwise noted. In 1976, over the objections of the FBI, the Attorney General ostensibly terminated the generalized domestic security investigation of the SWP, 642 F. Supp. at 1400. In doing so, he specifically left open the possibility of reopening the investigation in the future, instructing that information concerning an asserted link between the SWP and a foreign-based political group "should be carefully watched" and that the emergence of "new facts or circumstances" may "justify investigation" and "a reconsideration would be in order." 642 F. Supp. at 1401.

As the Commission recognized, the SWP was the subject of the FBI COINTELPRO Program in the 1960's and 1970s. 1990 AO at 11,635. The avowed purpose of the program was "designed to disrupt the SWP on a national, as well as local level." *Id.* (quoting *Socialist Workers Party v. Attorney General*, 642 F. Supp. at 1348). Under the COINTELPRO Program directed specifically at the SWP,⁷ at least 46 specific disruption operations were conducted by the FBI. The disruption included, among other activities,⁸ attempts to embarrass SWP candidates, cause the arrest of candidates, foment racial strife within the SWP and between the SWP and other groups, and cause strife between SWP supporters and others in a variety of political movements and coalitions.

The Commission found that the FBI conducted warrantless electronic surveillance of the SWP on an extensive basis. 1990 AO at 11,635. Electronic eavesdropping resulted in the collection of all manner of information on political matters as well as a host of information on more personal matters.

During the same time period, the FBI conducted at least 204 "surreptitious entries," *Id.*, or black bag jobs, *i.e.*, burglaries of the offices of the SWP. These burglaries were, of course, not the only means by which the government obtained documents, for the government also

⁷ The SWP was also targeted for disruption under the auspices of the COINTELPRO Programs directed against the Communist Party and the "New Left." 642 F. Supp. at 1385.

⁸ An overview of the disruption activities is set forth in *Socialist Workers Party v. Attorney General*, 642 F. Supp. at 1385-89. A more detailed description of many of the disruption activities can be found in Nelson Blackstock, COINTELPRO: THE FBI'S SECRET WAR ON POLITICAL FREEDOM (3rd ed. 1988).

maintained an extensive network of informants who, as the Commission found, “reported on the activities, discussions, and debates of the SWP.” *Id.*

As the Commission noted, over a period of many years, the FBI maintained lists of the names, addresses, and employers of SWP members – successively identified as the Custodial Detention List, the Security Index and the Administrative Index – which targeted individuals for detention in the event of a “national emergency.” *Id.* at 11,635. The FBI intended to include all SWP members on these lists. *Id.*

Beginning in 1948, the SWP was included on the Attorney General's list of organizations designated pursuant to Executive Order 9835 establishing the Employee Loyalty Program for certain employees of the executive branch of the government.⁹ Under the program, any member of a listed organization who applied for a job was subjected to a full field investigation by the FBI and was questioned concerning his or her loyalty. The loyalty determination was then used

⁹ Executive Order 9835 provided that in determining loyalty to the government, one of the factors to be considered was an individual's membership in an organization designated by the Attorney General:

as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

Executive Order 9835 was substantially amended by Executive Order 10241 and superseded by Executive Order 10450 so as to include *all* government civilian employees. The Attorney General continued to maintain his list including the SWP throughout these changes.

in determining whether to hire the individual.¹⁰ *Socialist Workers Party v. Attorney General*, 642 F. Supp. at 1396-97.

Even after the Attorney General's list was terminated in 1974, the FBI continued to report an individual's membership in the SWP. Post-1974, the FBI described the SWP as follows:

The SWP is a revolutionary, Trotskyist-communist organization which has as its purpose the overthrow of the U.S. Government and the institution of a dictatorship of the working class and the eventual achievement of a communist society.

642 F. Supp. at 1399.

In 1986, after 13 years of litigation, the court in *Socialist Workers Party v. Attorney General* awarded damages against the United States for this sustained and systematic violation of the SWP's rights. 642 F. Supp. at 1417-25. It found that the FBI had acted "with a malign purpose," with the intent of causing harm, and without any legal authority or justification. *Id.* at 1419-20.

As the Commission has found, there is reason to believe that the federal animus against the SWP continues, *1990 Opinion* at 11,635, reinforcing the chilling effect on First Amendment rights created by past misconduct. The Commission noted that, even after the federal court had issued its 1986 judgment holding the FBI's decades-old campaign against the SWP unconstitutional, *Socialist Workers Party*, 642 F. Supp. 1357, and had further found that, as the Commission summarized the holding, the SWP was engaged in "peaceful, lawful political activity," *1990 AO* at 11,635, the federal government submitted affidavits in 1987 asserting a

¹⁰ There have been a number of instances in which the fact of the individual's association with the SWP affected his or her employment. See 642 F. Supp. at 1389-99.

continuing need to access information about the SWP, its members, and supporters. The Commission found these affidavits to be significant evidence of continued governmental hostility, and that the government continued to view the SWP as a “hostile organization which has consistently posed a threat to free government.” *Id.* (internal quotations omitted).

Indeed, the government continued to insist that “it was – *and is* – reasonable for the FBI and other agencies of the Government to believe that the SWP and its members have a revolutionary ideology whose goal is the violent overthrow of our democratic processes and form of government.” Ex. B to SWP’s November, 1, 1996 Advisory Opinion Request to the FEC (“1996 Request”) at 9 (emphasis supplied); this “revolutionary ideology . . . poses a threat to the fundamental interest of self-preservation,” *id.* at 10. On this basis, the federal government asserted an interest in and need to know and record the names of members and individuals associated with the SWP. *See Socialist Workers Party v. Attorney General*, 666 F. Supp. 621, 623 (S.D.N.Y. 1987).

Various government agencies expressed their intent to use such information, and their fundamental antagonism toward the SWP, in clear terms. For example, the Office of Personal Management argued that such “information [is] important because these organizations in the past were opposed to our form of Government and the national interest.” Declaration of Gary B. McDaniel ¶ 6, Ex. C to 1996 Request. The Department of State asserted its need for access to these files because of a need for information about, in its words, “interaction with a group advancing a hostile ideology” for security clearances, and “information about any hostile organization which has consistently posed a threat to free governments. . . .” Declaration of

Roger H. Robinson, ¶¶ 4, 6 Ex. D to 1996 Request. The Immigration and Naturalization Service claimed a need to know the identities of SWP supporters in order to enforce laws making an individual who advocates world communism or the establishment of totalitarian dictatorship deportable from this country, excludable from this country or ineligible for naturalization. Declaration of Edwin W. Dornell, ¶¶ 5, 6, Ex. E to 1996 Request.¹¹ See also Declaration of Thomas J. O'Brien ¶¶ 3-9, Ex. F to 1996 Request, explaining need for access to FBI files on the SWP because they “may serve to corroborate or establish an affiliation with” an organization “characterized by Executive Order 10450” for the purposes of investigations of members of the armed services, civilian employees and employees in industry by the Defense Investigative Service.

The court ruled against the government’s demand for access to the names of SWP members and associated individuals. *Socialist Workers Party v. Attorney General*, 666 F. Supp. at 623. Nonetheless, the government’s assertions of need for information and its pronouncements of its intended use reinforce the lesson reasonable persons draw from the historical record of federal misconduct and animus: that disclosure of their relations with or support of the SWP or its candidates might provide, now or sometime in the future, a basis for federal investigation or other prejudicial actions.

¹¹ See 8 U.S.C. §§ 1182(2)(28)(D) and (F), 8 U.S.C. § 1251(a)(6)(D) and 8 U.S.C. 1424(a)(3). There are numerous statutes in addition to these immigration provisions which place supporters of the SWP in danger of legal sanctions or harassment if their associations were made public. In addition to the Smith Act, 18 U.S.C. § 2385, there is a host of other legislation which potentially exposes individuals to civil and criminal sanctions. See discussion in *FEC v. Hall-Tyler Election Campaign Committee*, 678 F.2d at 422 and statutes surveyed in Appendix to Brief of Defendants-Appellee filed in that case.

IV. Recent Changes in FBI Guidelines and Practices

Recent changes in the Attorney General's Guidelines for Domestic FBI Operations powerfully reinforce the chilling effect of the government's long history of systematic harassment of the SWP and similarly make the recent instances of violence and intimidation even more weighty. After a period of well-publicized deliberations, the Attorney General formally overhauled the FBI guidelines in October 2008, replacing the guidelines adopted by the Attorney General in the wake of revelations in the 1970s of FBI misconduct against the SWP and others and successor guidelines. Ex. F. The new Guidelines concern, *inter alia*, FBI investigations and information gathering relating to "threats to the national security," and allow the FBI to initiate investigations based on its own "threat assessment" and profiles constructed from public databases and informants' tips. Ex. F, at 16-24. Contemporaneously, the FBI reportedly is developing a network of 15,000-plus informants in the United States; has ramped up internal data-mining efforts; and has recruited local and state law enforcement into open-ended data collection efforts. Ex. G.

In June 2008, the FBI issued guidance to local law enforcement agencies about "suspicious activity" to be recorded and shared with federal authorities, including concerning such First Amendment-protected activities as expressing "extremist views" and "affiliation" with "extremist organizations." The federal government reportedly has created a nationwide network of approximately 42 "fusion centers" where federal and state law enforcement authorities can share private information on individuals. Ex. G.

In addition, there have been widespread reports in the media in the past six years of city

and state law enforcement agencies in places such as New York, California and Denver infiltrating protest groups and other activists groups without detection. Ex. G.

There has been widespread public concern, expressed repeatedly by the press and numerous civil liberties and other public organizations, that the new FBI Guidelines and practices are excessive, inconsistent with the First Amendment, readily subject to abuse and threaten to renew the very type of practices and excesses that characterized the FBI's long history of harassment of the SWP. Attached hereto are a sampling of the plethora of articles and editorials expressing concern drawn from the *New York Times*, the *Los Angeles Times* and the *Washington Post*. Ex. H.

Concern has been sufficiently great that Congress held hearings on the guidelines in September 2008. Senator Patrick Leahy, Chairman of the Senate Judiciary Committee, stated at the Sept. 17 Judiciary Committee hearings:

We learned last month that the Attorney General was planning to revise the guidelines for the FBI's investigative activities. Allowing the FBI authority to use a vast array of intrusive investigative techniques with little or no predicate facts or evidence raises concerns and may potentially lead to the kinds of abuses we have seen with national security letters and with other vast grants of authority with minimal checks in the past. . . . Even as we try to get a handle on the Administration's latest expansion in the FBI's investigative authority, we are reminded of the problems that followed other recent expansions of the FBI's investigative powers.

Hearing on Oversight of the Federal Bureau of Investigation, September 17, 2008, *available at*

http://judiciary.senate.gov/hearings/testimony.cfm?id=3530&wit_id=2629.

V. Continuing Harassment: 2002-2008

A. Summary

Dispositively, the record of recent harassment is comparable in number and kind of incidents to the record that the Commission previously found sufficient to justify exemption in 2003. For the 1996-2002 period, we documented 74 incidents of harassment, and here we document 62 incidents. Here, as in the 1996-2002 period, there were physical attacks on SWP campaign supporters and offices, threatening mail and telephone calls, job firings and discrimination, and harassment of SWP supporters and campaign efforts by federal and local law enforcement as well as private individuals.

For the present period, as with our prior submission, each incident is documented by the sworn declaration of a person with personal knowledge of the matter. This showing is supplemented in several instances with contemporaneous correspondence, official records, photographs, television news broadcasts, or articles that appear in mass circulation sources unrelated to any party.

As shown in detail below:

- Harassment of the SWP supporters continues to take place nationwide.
- The harassment has included:
 - Firebombing of an SWP campaign office and other physical attacks – Exs. 1, 2, 3, 4, 5, 6, and 27;
 - Three firings of SWP candidates and campaign supporters – Exs. 20, 21 and 22;
 - A harassing and intrusive interrogation by two FBI agents of a SWP candidate – Ex. 19.

- There is widespread intimidation of SWP supporters, as well as surveillance of SWP campaign activity, by federal and local law enforcement and private parties. Exs. I. & J.
- Not surprisingly, there is persistent widespread fear, frequently articulated, of associating, or even appearing to be interested in the SWP that leads people to refrain from supporting the SWP in any way.

The need for continued exemption is illustrated in particular by three recent incidents – the firebombing of SWP campaign offices in Hazleton, Pennsylvania in 2004; the FBI’s interest in and attempted intimidation of SWP candidate David Arguello in 2007; and, Hormel Meat Corporation’s firing of the SWP’s Atlanta City Council candidate in 2005.

The SWP and its supporters remain subject to extreme acts of violence, a fact that is well known. Shortly before the 2004 election, on September 11, the SWP campaign offices in Hazleton, Pennsylvania were firebombed during the night. Ex. 1, Declaration of Betsy Farley. A brick wrapped in incendiary material was thrown through the front display window featuring SWP campaign materials, political books, and announcements of upcoming public meetings. *Id.* The fire severely damaged the front part of the building and threatened the lives of people living there. The police have no suspects. *Id.* News articles on the firebombing were published in the local and regional newspapers and news stories aired on the local television stations. Newspaper articles and a DVD of the different television segments are attached as Ex. 1.

SWP candidates and supporters also continue to be subjected to heightened scrutiny, harassment and surveillance by government officials. On May 16, 2007, two FBI agents arrived unannounced at the home of David Arguello, the 2006 Socialist Workers Party candidate for U.S. Congress, in San Diego, California, on the pretense that they had information from an

anonymous source that Mr. Arguello advocated violence against the U.S. Government. Ex. 19, Declaration of David Arguello. The agents did not arrest Mr. Arguello but interrogated him about his political views and activities and his interest in unionizing his workplace. *Id.*

SWP candidates and their supporters also continue to suffer workplace discrimination based on their political views. On October 28, 2005, Lisa Potash, then the SWP candidate for president of the Atlanta City Council, was fired by the Hormel Meats Corporation in Tucker, Georgia, shortly after the *Atlanta Journal Constitution*, a daily newspaper, ran an article on October 20, 2005 that described her candidacy and SWP platform, and printed her photograph. Ex. 20, Declaration of Lisa Potash. Ms. Potash filed a grievance with her union and was reinstated with full backpay and benefits after arbitration. *Id.* The *Atlanta Journal Constitution* subsequently ran an article on November 17, 2005 about Mr. Potash's firing, noting that she was the SWP candidate for president of the Atlanta City Council at the time she was terminated. *Id.*

The long history of harassment against the SWP by the government and private entities, the recent changes in the FBI domestic surveillance guidelines and practices, and repeated instances of intimidation, violence and reprisals against SWP candidates and supporters over the past six years combine to create an intimidating and hostile atmosphere that deters association with the SWP. This is not only evident as a matter of common sense and experience, as the Commission has previously recognized, but is further established by testimony submitted here.

For example, during the past year, Róger Calero, the SWP candidate for President of the United States, and Alyson Kennedy, the SWP candidate for Vice-President of the United States, campaigned extensively across the United States, in particular in states where supporters were

petitioning to place the party's ticket on the ballot. At numerous times, people interested in the campaign declined either to sign a nominating petition or to make a donation expressly for fear of being placed on an FBI or other government list and being harassed. Exs. 63 & 64.

In addition, Calero campaigned among many Latino voters who told him they would not sign a nominating petition for fear that immigration authorities would harass them. Ex. 63. Similarly, coal miners from Mexico with whom Kennedy had worked before becoming a candidate told her they would not support SWP campaigns or subscribe to the *Militant*, which editorially supports the SWP campaigns, for fear they would come to the attention of federal immigration authorities. Ex. 64.

In October 2008, supporters of the Socialist Workers campaign staffed a campaign information table on the Boston Common in Massachusetts during a protest against U.S. involvement in the wars in Iraq and Afghanistan. A person expressed interest in the campaign but declined to give his name for a mailing list, saying "This might sound paranoid, but I don't want to put my name on any lists" and mentioning the recent laws on spying and wiretapping passed by the government. Ex. 65. These were similar to incidents throughout the country. See Exs. 66 (Chicago), 67 (Miami), 68 (Vermont), 69 (New York), 70 (Washington, D.C.), and 71 (Minnesota).

B. Specific Incidents

We summarize below post-2002 incidents of harassment, threats, and reprisals. The supporting declarations and the evidence are bound in a separate volume with the corresponding exhibit numbers.

1. As explained above, the Socialist Workers 2004 campaign headquarters in Hazleton, Pennsylvania, was firebombed in September 2004.
2. In July 2005, a projectile was sent into the headquarters of the Los Angeles, California, Socialist Workers Party campaign, punching a hole in the storefront window and shattering glass up to thirty feet into the office.
3. In August 2007 in South Orange, New Jersey, a can of white paint was poured over the car of long-time SWP supporter Michael Baumann outside his home, and a U.S. flag laid out on the grass next to it. Two weeks earlier, this car was used to transport SWP supporters and SWP campaign literature, including the *Militant*, to a highly polarized demonstration in support of immigrants' rights in Morristown, New Jersey.
4. In September 2007, "Nigger fags" was painted on the window of the Chicago SWP campaign office above a copy of the *Militant* newspaper highlighting coverage of the defense campaign for the Jena 6 (a nationwide movement seeking justice for six Black high school students in Jena, Louisiana). A police report was filed and the local CBS television affiliate covered the vandalism in its lead story on the 10 o'clock news.
5. In March 2008, anti-immigrant graffiti was painted on the Chicago Socialist Workers Party headquarters while the SWP branch there was active in supporting protests against government raids targeting undocumented workers.
6. In November 2004, a SWP plexiglass sign screwed into the wall at the SWP campaign headquarters in Boston, Massachusetts and a flyer announcing an upcoming event featuring a former SWP candidate were ripped off the wall and destroyed. This came

after a similar incident in the same location in September 2003, in which the plexiglass sign and three flyers were ripped off the wall.

7. In June 2005, the Socialist Workers Party in Los Angeles, California, was informed by the U.S. Department of Justice that it was one of 56 groups and individuals sent threatening letters denouncing "Jews, Blacks, Latinos, Asians and homosexuals" by an individual previously arrested for threatening to attack schools with anthrax. According to the Department of Justice, 52 of the 56 letters contained syringes. The incident was reported in the *Los Angeles Times* and the *Torrance, California Daily Breeze*.
8. In June 2004, supporters of the SWP campaign were petitioning in Meridian, Mississippi, to put the party's presidential ticket on the ballot when they were told by a person that he wanted to "put a bullet in every one of your heads." He then pressed the store management to revoke the permission granted to petition there, forcing the SWP campaign supporters to leave.
9. In June 2004, a threatening message was left on the phone at the San Francisco Socialist Workers Party headquarters saying "you all are going to pay for it."
10. In May 2004, a threatening message was left on the phone at the San Francisco Socialist Workers headquarters stating "we'll be keeping an eye on you."
11. In October 2002, Tony Lane, Socialist Workers Party candidate for Governor of Pennsylvania, and a campaign supporter were threatened outside a mine portal in Prenter, West Virginia, by a person who told them leave the area immediately or he would do them bodily harm.

12. In November 2002, a threatening e-mail message was sent to the campaign of Rachele Fruit, Socialist Workers candidate for Governor of Florida, saying "What's that smell? Ohhh, a communist lurking... running for office. Ain't gonna happen, sister."
13. In August 2003, a public meeting in support of organizing efforts by the carpenters' union in Birmingham, Alabama, held at the Socialist Workers office was secretly tape-recorded by an anonymous individual. A copy of the tape was later anonymously sent to the carpenters' union office. No permission to tape the event was requested or granted.
14. In October 2008, the Socialist Workers campaign headquarters in Minneapolis, Minnesota received two threatening and harassing phone calls.
15. In July 2007, members of the Minutemen, an organization reportedly prone to violence, and others set up a picket outside a public meeting at the Socialist Workers headquarters in Des Moines, Iowa, featuring a program entitled "Stop the raids! Legalize all immigrants now!" The Minutemen harassed and threatened people coming to attend the meeting, screaming "down with the Marxists, communists and socialists" and taunting "where's the militancy? We thought you were militant."
16. In September 2008, a phone message was left on the Socialist Workers campaign phone answering machine in St. Paul, Minnesota, calling campaign supporters "moron assholes."
17. In September 2008, supporters of the Socialist Workers campaign were staffing a literature table in East Boston, Massachusetts, with signs telling of the campaign's support for legalization for immigrants. A woman told others in a loud voice "That table

should be set on fire.”

18. In May 2005, a hostile e-mail message was sent to a SWP campaign supporter in Boston, Massachusetts, saying “Cuba? What are you, an idiot? Get out of MY country and spend your days in Socialist heaven.”
19. As explained above, in May 2007, two FBI agents arrived unannounced at the home of David Arguello, the 2006 Socialist Workers Party candidate for U.S. Congress, in San Diego, California, and interrogated him concerning his political views and activities while running for office.
20. As explained above, in October 2005, Lisa Potash, Socialist Workers Party candidate for president of the Atlanta City Council, was fired from the Hormel Meats Corporation in Tucker, Georgia, one week after an article featuring her campaign appeared in the *Atlanta Journal Constitution*.
21. In April 2008, shortly after Laura Anderson’s work supervisors told her that they knew she was the Socialist Workers Party candidate for U.S. Congress in the 4th Congressional District in Illinois, she was fired from her job at A Lava and Son in Chicago.
22. In February 2008, one week after starting to campaign for the SWP outside her employer’s parking lot after work, Cecelia Moriarity was fired from her job at Unionbay warehouse in Kent, Washington on false pretenses.
23. In February 2006, the landlord of the Socialist Workers headquarters, a bank manager, in Price, Utah, threatened to evict the group, stating that he did business with a “lot of customers you are against.” This threat came as the party was supporting coal miners

striking to win a local of the United Mine Workers of America union at the Co-Op mine outside the city.

24. In January 2006, distributors of the *Militant* newspaper were forced by police to leave Phillipi, West Virginia or face arrest while distributing an issue of the paper and campaigning for union action to defend mine safety. The campaigners were escorted to the city limits by police. This incident was reported in the Clarksburg *Exponent Telegram* newspaper.
25. In October 2005, supporters of the Socialist Workers campaign canvassed door to door in a neighborhood on the north side of Toledo, Ohio, a few days after the National Socialist Movement, a neo-Nazi organization, had attempted to conduct a march in the city. The police told the SWP campaigners they were prohibited from going door to door in Toledo and threatened them with arrest. The officers demanded they leave the city, and, fearing further harassment or arrest, the campaigners left.
26. In October 2006, a supporter of the Socialist Workers campaign, who was campaigning with William Arth, Socialist Workers Party candidate for Governor of Georgia, was forcibly removed by police under threat of arrest from an immigrant rights march in Atlanta.
27. In August 2003, Nicole Sarmiento, a Socialist Workers campaign supporter was grabbed and dragged away from a literature table outside the longshore workers union hall in Miami, Florida. Other campaign supporters were also threatened by the same individual.
28. In January 2003, an anonymous phone call was made to a Shoreline Community College

instructor in Seattle, Washington, smearing Scott Breen, a student who had posted a research paper on a related internet board. The call was accompanied by a posting on the internet reading "Who is Scott Breen? A leading NIH researcher? No, he is a guy who once ran for Mayor of Seattle on behalf of the Socialist Workers Party."

29. In September 2008, Socialist Workers campaign supporters were distributing literature near Georgia State University in Atlanta that included materials about the party's presidential and local Georgia candidates, as well as a flyer protesting the scheduled execution of Troy Davis and opposing the death penalty. The campaign is active in promoting actions and education in defense of Mr. Davis. Officers from two police cars surrounded the table and intimidated the campaign volunteers, forcing them to take down their table, scaring away people who had come to the table for information, and tore up leaflets urging support for the actions against the execution of Troy Davis.
30. In August 2004, SWP campaign volunteers distributing literature in front of the Art Institute in Pittsburgh, Pennsylvania were harassed and ordered to leave, called "fucking communists," and threatened with arrest by an employee and administrator at the Art Institute.
31. In October 2008, three SWP campaign supporters were leafleting and campaigning for the party's candidates on public property outside the Dakota Premium Foods plant in South St. Paul, Minnesota, when the head of company personnel came out of the plant and threatened them with arrest.
32. In September 2008, a SWP campaign supporter was distributing literature at a

demonstration conducted outside the Republican National Convention in St. Paul, Minnesota when an individual came up to the supporter, grabbed a copy of the *Militant* newspaper from his hands and tore it up.

33. In September 2008, SWP campaign supporters, who were distributing literature outside the JBS Swift beef slaughterhouse in Grand Island, Nebraska were approached by company security officers and told to get off the property. When they moved off the property, the security officers threatened to have them arrested. The security officers monitored them with an electronic camera and parked a security car next to the campaigners, which intimidated workers interested in the campaign literature and inhibited them from stopping.
34. In September 2008, SWP campaign supporters were distributing literature in Los Angeles on a public sidewalk outside a supermarket close to the SWP campaign headquarters. They were at a table featuring a sign "U.S. Troops Out of Iraq." Although they had campaigned in the same location in the past, the store manager told them "U.S. troops out of Iraq? I don't think so. You have to leave immediately." He left and returned with a fax he said was from the "home office" threatening them with civil and criminal prosecution if they ever returned.
35. In August 2008, SWP campaigners participated in a march and program to commemorate the third anniversary of hurricane Katrina in New Orleans, Louisiana, and set up a campaign table. A woman ordered them to take down the table and get rid of "that socialist and communist shit" and threatened that she would have the table shut down if

they didn't hurry up and "take this stuff away."

36. In June 2008, SWP presidential candidate Róger Calero and Socialist Workers campaign supporters participated in a demonstration in New York City in support of the "Cuban Five," five Cubans convicted by U.S. courts, where they were monitored by the New York police, who took photographs of participants, including Calero and SWP supporters.
37. In May 2008, Michael Taber, the Socialist Workers candidate for U.S. Congress in New Jersey's 10th Congressional District and other SWP supporters were ordered by two police officers in Newark's Penn Station to stop petitioning to put party candidates on the ballot and leave. One of the officers took down Taber and the other supporters' names.
38. In May 2008, a Socialist Workers campaign supporter obtained a copy of the internet newsletter, "Black Velvet Bruce Li," published by Greg Letiecq, a leader of the group "Help Save Manassas." It showed a photo of three Socialist Workers campaign supporters marching in a demonstration in defense of immigrants' rights with a caption labeling the organizers of the march "communist," and saying "This should be interesting: an anarchist organization affiliated with the Zapatista Army of National Liberation in Mexico is calling for a halt to the enforcement of federal law."
39. In March 2008, although SWP campaign supporters had secured permission to campaign at the Borough of Manhattan Community College in New York City, after distributing literature for about an hour, campus police informed them that they had orders from the dean to have them take their materials and leave the campus immediately. The SWP

campaign supporters then left.

40. In March 2008, SWP campaign supporters set up a table outside the Farmer John Meat Packing company gate in Los Angeles, California, where they had set up campaign information tables for year. They were approached by a company security guard who told them "You guys can't just come here and set up a fucking table, you know." When they informed the guard they were just passing out information on their candidates and that they had been campaigning there for years, the guard yelled back "I don't fucking care."
41. In May 2005, Socialist Workers campaign supporters were ordered by a security guard in Bessemer, Alabama to shut down a campaign table and leave a flea market, after paying for the vendor's table and receiving permission to campaign. The security guard told them "there's no communist literature allowed here."
42. In October 2008, a SWP candidate and campaign supporters were distributing literature in East Boston, Massachusetts, when two police cars pulled up nearby. As the campaigners were speaking with a man interested in the campaign, the police officers got out of their vehicles and, as they were approaching the table, a campaigner overheard one police officer say to another that it was a "a free-speech thing." The officers told the campaigners that they could not block the sidewalk. After agreeing with the campaigners that they were not blocking the sidewalk, the officers told them they were blocking the bus stop. The campaigners agreed to move their table 50 feet away. After moving the table, the man who had been interested left and did not come back.
43. In October 2008, SWP campaign supporters in Chicago, Illinois, who had setup a

campaign literature table at the curb of a wide public sidewalk near the Bedford Park Post Office, were told by a police officer to take down their table and leave the vicinity or else move to a patch of mud next to the sidewalk.

44. In October 2008, two Socialist Workers supporters were campaigning for the party's presidential ticket at the University of Miami when a hostile young man told them they could not campaign there and insisted they leave, making them fearful of arrest. The young man followed them to make sure they left.
45. In September 2008, SWP campaign supporters were distributing campaign literature at a shopping center in Langley Park, Maryland. After looking at the campaign literature, a woman began berating the volunteers, yelling that they were just trying to get McCain elected. She crumpled the literature and threw it at the campaigners, and began yelling at others who came by the table, telling them not to talk to the campaign supporters or take their literature.
46. In August 2008, Socialist Workers campaign supporters were petitioning outside two stores in Coralville, Iowa, to place the party's presidential ticket on the ballot, and were approached by store security and ordered to leave. At one store, they were in the process of having a voter sign the petition when security guards ordered them to "leave immediately," which prevented the voter from completing his signature.
47. In June 2008, campaign supporters were distributing campaign literature and the *Militant* at a shopping center in Washington, D.C. when a person organizing the taxis at the mall told them they could not distribute their literature or take donations. He shouted at

people attracted to the literature, telling them not to accept any material from them. For fear of provoking a further incident, the campaigners first moved to a less frequented area of the mall and then stopped passing out literature altogether and left.

48. In April 2008, on two occasions a self-proclaimed former agent for the Alcohol, Tobacco and Firearms bureau visited the New York Socialist Workers campaign headquarters one time asking for information about the party's alleged "support for violence."
49. In January 2008, SWP campaign supporters set up a campaign table on a street corner in Washington, D.C., where there is heavy foot traffic and they got a good response. The Retail Property Manager from a nearby building told them they had to leave. She took literature, saying she wanted to get their names and addresses. Fearing further harassment, the campaigners left and were reluctant to return to the area to campaign with the Socialist Workers presidential candidate when he toured D.C. two weeks later.
50. In October 2007, SWP campaign supporters set up a campaign table in East Boston, Massachusetts, and were approached by four police officers, who told them they had to take the table down. The officers picked up a number of books on the table and asked "what do these have to do with your campaign?" Another officer told them they were in violation of an ordinance that prohibited soliciting within ten feet of an ATM machine. The campaigners were forced to move the table.
51. In September 2007, supporters of the 2007 SWP mayoral campaign in Philadelphia set up a campaign table in the University District, displaying campaign literature, books and pamphlets, as well as a "Justice for the Jena 6" poster, a nationwide movement seeking

justice for six Black high school students in Jena, Louisiana. Within minutes of arrival, a police officer asked them what they were doing and thereafter several other police officers hovered around and approached the table, intimidating the campaigners and others attracted to the table.

52. In May 2007, Tyson Foods company officials and two police officers harassed SWP campaign supporters who were distributing the *Militant* outside the employee parking lot in Albertville, Alabama. The police told the supporters they needed permission from the city to engage in this activity and initially seized all copies of their literature, allegedly to conduct an investigation. The police ran checks on their identifications. When the chief police officer arrived, he instructed the two officers to return all but one copy of the confiscated materials.
53. In April 2007, an undercover police officer told a group of SWP campaign supporters, who had setup a table on the sidewalk in Newark, New Jersey with a sign protesting police brutality, that they couldn't "be [t]here" without a permit.
54. In February 2007, SWP campaign supporters at a table outside the post office in Miami, Florida, were harassed by a man taking pictures of them and claiming they didn't have the right to distribute socialist literature.
55. In January 2007, the Young Socialists national office and Albany chapter (the Young Socialists are a youth organization that supports the Socialist Workers candidates) received a threatening e-mail that called them "assholes" and deriding their support for the Cuban revolution.

56. In September 2006, campaigners for the Socialist Workers were threatened by a police officer with several unidentified violations of law and forced to take down a campaign table in Chicago after the officer saw a campaign sign on the table protesting police brutality.
57. In April 2006, SWP campaign supporters set up a literature table as part of a demonstration organized by the National Black Farmers Association and the Black Farmers and Agriculturalists Association held near the Department of Agriculture in Washington, D.C. Park police told them they would have to take down their table and leave the area, and if they returned to the demonstration they would be arrested.
58. In February 2006, supporters of the Militant Labor Forum and the Socialist Workers campaign in San Francisco, California, were initially fined \$1,200 by the San Francisco Department of Public Works for flyers advertising upcoming meetings that the authorities claimed were posted on light poles around the organizations' offices. The fine was reduced after appeal to \$450.
59. In October 2004, police shut down a campaign table distributing literature on the public sidewalk outside a movie theater in Montclair, New Jersey that was staffed by Angel Lariscy, Socialist Workers Party candidate for Congress in the 13th Congressional District in New Jersey, and other SWP supporters, saying they needed a permit and threatening them with a summons.
60. In September 2004, the C.W. Mining Company in Huntington, Utah and its company union filed a harassment lawsuit charging defamation against a number of coal miners

who were involved in an effort to organize the mine into the United Mine Workers of America, including the Socialist Workers Party 2004 presidential candidate, Róger Calero, Norton Sandler, the Socialist Workers National Campaign Committee Chair. The *Militant* newspaper editorially supported both the miners' efforts and the Socialist Workers campaign.

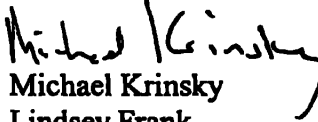
61. In July 2004, Karl Butts, Socialist Workers candidate for U.S. Congress in the 11th Congressional District in Florida, and other SWP campaign supporters were ordered by two police officers to leave a flea market in Tampa.
62. In August 2004, the *Jackson Advocate*, a weekly newspaper in Mississippi, printed an article that falsely claimed that the Socialist Workers campaign and its candidates for president and vice-president, Róger Calero and Arrin Hawkins were attempting to deceive state officials and voters by running two stand-in candidates. The article was printed just as the party was in the process of filing petitions containing the signatures of over 2,400 Mississippians to place the presidential ticket on the ballot. The *Jackson Advocate* declined to print a letter from Norton Sandler, chair of the Socialist Workers National Campaign, correcting the errors.

CONCLUSION

There is a reasonable probability that the compelled disclosure of the Socialist Workers Party's contributors and recipients will subject them to threats, harassment or reprisals by private persons and organizations and by government officials. The showing made here of recent harassment, and of the continuing impact of the federal government's long history of harassing

the SWP, is in all respects comparable to the showing recognized as sufficient by the Commission in its 2003 Opinion. The legitimate government interest in compelled disclosure is *de minimis* given the SWP's status as a minor political party with extremely limited electoral and financial support. The constitutional principles established by the Supreme Court and recognized by the Commission require renewal of the exemption granted by the Commission in its 2003 Advisory Opinion and grant of an exemption from any applicable new, post-2002 reporting requirements.

Respectfully yours,


Michael Krinsky
Lindsey Frank

RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN, P.C.
ATTORNEYS AT LAW
111 BROADWAY, ELEVENTH FLOOR
NEW YORK, NY 10006-1901

TELEPHONE (212) 254-1111

FACSIMILE (212) 674-4614

www.rbskl.com

VICTOR RABINOWITZ (1911-2007)
LEONARD B. BOUDIN (1912-1989)

MICHAEL KRINSKY
ERIC M. LIEBERMAN
DAVID B. GOLDSTEIN
CHRISTOPHER J. KLATELL

LINSEY FRANK

COUNSEL

LEONARD I WEINGLASS
DEBRA EVENSON
TERRY GROSS
BAG KAPLAN

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COMMISSION
OFFICE OF GENERAL
COUNSEL

JAN 14 P 1:48

January 13, 2009

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

Dear Commissioners:

On behalf of our clients, the Socialist Workers Party, the Socialist Workers National Campaign Committee, and committees supporting candidates of the Socialist Workers Party (hereinafter collectively, for convenience, "SWP"), we hereby supplement as follows the SWP's request made on October 31, 2008 for an advisory opinion, pursuant to 2 U.S.C. § 437(f) and 11 C.F.R. § 112.1, that the SWP continues to be exempt from certain reporting and disclosure provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, *et seq.* ("FECA").

First, with the additional 14 incidents of harassment or reprisals against SWP supporters provided in this supplement, the demonstrated incidents of harassment in the 2002-08 period *exceeds* in number – and is comparable in kind – to what the Commission found to be sufficient to grant the

SWP exemption in both 2002 and 1996. In the original filing in October, the SWP documented 62 incidents and here supplements the record with evidence of 14 additional incidents, for a total of 76 incidents. In contrast, the Commission granted the SWP's 2002 exemption request on a record of 74 documented incidents and its 1996 exemption request on a record of 72 documented incidents.

Second, we show that, in seven of the ten locations in which SWP campaign supporters were harassed or threatened with arrest by the police for alleged ordinance violations, the police had exceeded their authority because the SWP campaign supporters' activities were authorized by local code. In the three locations in which there were legal provisions requiring individuals to obtain a permit before distributing political literature, as well as in the other instances, the police officers' actions clearly reveal that there was an anti-SWP animus in the selective application of these code provisions.

Third, we provide copies of government documents from 1987 in which the government expressly justifies its continuing interest in the SWP on the basis of federal responsibilities with respect to terrorism. This is significant because, as openly acknowledged and publicly known, the government is using this very same justification today to increase infiltration into and surveillance of protest and other activists groups.

We are attaching a number of articles of police activity on both a local and national level reflecting stepped-up spying, use of undercover informers, and other measures aimed at organizations and individuals engaged in constitutionally protected political activity. The articles also demonstrate that this kind of spying and harassment is becoming increasingly well known in the public at large in this country.

Consequently, any person interested in the SWP could have a reasonable fear that association

with the SWP may well subject them to government surveillance and harassment. The government's current anti-terrorism domestic programs, coupled with its express interest in the SWP on a terrorism rationale, make the need for continued exemption particularly compelling.

Fourth, we demonstrate that during the last six years there has been a significant increase in the number of individuals who have expressed interest in SWP campaigns but declined to lend their support for fear of harassment or reprisal. In the original submission, we showed that there was a constant and pervasive fear by individuals throughout the country of associating with the SWP, including within populations such as the Hispanic community where SWP campaigns have found growing interest and support in recent years. In addition to this showing, we provide evidence of a total of 12 specific declarations – seven in the original and five in the present submission – that substantiate the pervasiveness of this fear.

Fifth, we present additional supporting evidence for several of the incidents described in our previous filing, including photographic evidence and articles that appear in the *Militant*, a news publication that editorially supports the SWP's campaigns. In addition to confirming that these incidents took place, the *Militant*'s reporting is significant because the publication is a critical tool for introducing people to and allowing them to follow the SWP's campaigns. As a result, the people who are most likely to be interested in the SWP are also people who are acutely aware of the dangers of being associated with the SWP.

Sixth, we include in this submission the results for SWP candidates from the 2008 elections that confirm that the SWP continues to be a minor political party such that the government's interest in FECA's reporting and disclosure is *de minimis*.

I. The Required Showing and Additional Incidents

(A) The Required Showing: Reasonable Probability of Threats, Harassment, or Reprisals from “either Government officials or private parties.”

As the Commission recognized in its 2003 Opinion, *2003 AO* at 3, the required showing that a minor political party, such as the SWP, must make to qualify for an exemption under *Buckley* is as follows:

Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The 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*. . . . 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.

Buckley v. Valeo, 424 U.S. 1, 74 (1976) (emphasis added). As the Court clearly states, the party seeking exemption may satisfy the required showing by presenting evidence of threats, harassment or reprisals by “*either Government officials or private parties*” without making distinction between the two. *Id.* (emphasis added)

(B) Additional Incidents

The record of harassment between 2002 and 2008 *exceeds* in number – and is comparable in kind to – the record that the Commission previously found sufficient to justify exemption both in 2002 and in 1996. For the 1996-2002 period, the SWP documented 74 incidents of harassment and, for the 1990-1996 period, the SWP documented 72 incidents of harassment. In the original filing submitted on October 30, 2008, the SWP documented 62 incidents and here supplements the record with evidence of 14 additional incidents, for a total of 76 incidents. These additional incidents

concern three physical attacks on SWP offices (making for a total of 10 attacks on SWP offices or other physical attacks), four threatening letters or telephone calls (making for a total of 18 threatening letters or telephone calls or other confrontations), one job firing of an SWP candidate (making for a total of four such job firings and discrimination), and harassment of SWP supporters and campaign efforts. Moreover, even this compilation of 76 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.

As with our prior submission, each incident is documented by the sworn declaration of a person with personal knowledge of the matter. This showing is supplemented in several instances with contemporaneous television news broadcasts, articles that appear in mass circulation sources unrelated to any party or articles in the *Militant*, a news publication that editorially supports the SWP's campaigns.

72. In October 2008, a SWP candidate for State Senate in Massachusetts and SWP campaign supporters were campaigning in East Boston, Massachusetts. They had set up a campaign table in Central Square where they had campaigned numerous times previously. A police officer approached the candidate and insisted they needed a permit for their table. The candidate explained that they had discussed this same question with a police captain the week before and been told their table was legal. The police officer stood nearby and kept them under surveillance for the next half an hour.

73. In December 2008, someone tried to break into the Socialist Workers Party campaign office in Houston, Texas. A piece of concrete had been thrown through the campaign office's front window, shattering the window and making a large hole in it. The office had been the headquarters

of the Socialist Workers election campaigns for over four years and there was a large sign displayed near the window with the Party's name and information on its candidates. The attempted break-in was reported to the police; however, to date, the police have not provided any further information.

74. In August 2005, Jacob Perasso, the Socialist Workers Party candidate for Mayor of St. Paul, Minnesota, was fired from his job at Dakota Premium Foods in South St. Paul after he requested a leave to campaign. His request was submitted by the president of United Food and Commercial Workers Union local 789 and signed by more than a hundred of the candidate's coworkers. There is a history of bias by this company against the SWP and its supporters in the plant.

75. In October 2008, the SWP candidate for Texas State Representative in District 138, set up a table along with other campaign supporters at a Houston shopping center where a store owner had previously given permission to campaign. A security guard told him to stop campaigning on threat of arrest. He told the candidate that the company "won't allow you and your kind of material on the property." The candidate and his supporters felt forced to pack up their literature and leave.

76. In March 2006, Socialist Workers Party campaign supporters in Houston, Texas went to visit a subscriber of the *Militant* newspaper who had written to the paper that he wanted to join the party. When he didn't answer the door, they left a note saying they had come to see him. He sent a letter to the campaign office saying that he had had a gun pointed at them from inside the apartment and if they came back he would "blast them." In May 2006, he sent another letter asking for more information. In March 2007, he made a phone call to the party, reaching one of the campaign supporters who had visited his house. She asked if he had written before and he hung up abruptly.

77. In September 2007, an unmarked car pulled up and parked outside the Washington, D.C. office of the Socialist Workers Party. When people from the campaign office left and noticed the car, they were alarmed and asked the men in the car what they wanted. The men in the car asked if this was the SWP's office. The campaign volunteer answered yes and asked if there was anything else they were interested in. They said no; they just "wanted to confirm the location," adding menacingly, "We'll be back!" They then sped off.

78. In May 2006, Young Socialist supporters of the Socialist Workers Party were participating in an authorized public demonstration in support of legalization for undocumented workers at the State University of New York in Albany. When one of the Young Socialists was introduced as a speaker at the rally, an individual cursed him while he was on stage and then came on to the stage and seized the microphone away from him. Later during the march the same individual cursed and spat at other members of the Young Socialists.

79. In March 2006, two supporters of the Socialist Workers party who were selling the *Militant* to miners outside a mine portal near Birmingham, Alabama, were told by a miner that a group of bosses and others were organizing to "run us out of here." They were harassed and threatened by foremen and supervisors who threatened to "wup your ass" and clenched their fists as they approached them. They felt threatened and were forced to leave. They were followed to make sure they left.

80. In November and October 2008, the Socialist Workers campaign office in Seattle, Washington received two hostile phone messages. The October message stated that there was a person in Puyallup who "says he wants to kill all the sons a bi*** in the Socialist Party. Yeah, he's planning on killing the socialists and taking all the property that they get." The second message came

after the election, and the caller stated "The world knows who your candidate is" and "Yeah, you just keep at it."

81. In February 2003, supporters of the Iowa 2003 Socialist Workers election campaign came to their office in Des Moines and discovered that the plate glass windows and front door had been pelted with eggs. It was the only office on the block that had been attacked. This attack was reported to the police who came and filed a report, but no suspects were identified. The attack was reported in the local press, in the *Militant* newspaper, and publicly protested by other groups.

82. In August 2003, the front window of the Socialist Workers campaign headquarters in Des Moines, Iowa, was again hit by eggs. The eggs hit where a poster of Malcolm X was hanging in the window next to a sign advertising the office as the headquarters for the Socialist Workers campaign of Mary Martin for Mayor of Des Moines. No other offices on the block were vandalized. The attack was reported to the police who filed an investigative report, but no suspects were identified.

83. In October 2008, as Socialist Workers campaign supporters were distributing campaign literature outside the Dakota Premium Foods plant in South St. Paul, Minnesota, the former head of personnel of Dakota Premium Foods raced his car towards one of the campaigners from behind so the campaigner could not see him. The campaigner heard the car as it came near and jumped as the driver came to a halt a few feet from him.

84. In November 2008, two long-time supporters of the Socialist Workers Party and its candidates from Miami, Florida, were told at Newark Airport on November 25, 2008 that they could not check their baggage because one of them was on the government's "Watch List."

85. In 2006 and 2005, Socialist Workers Party candidates for State Assembly from

Philadelphia and for Mayor in Pittsburgh, Pennsylvania, faced the threat of being denied ballot status because they refused to sign a 'loyalty oath' on their nominating papers swearing that they were "not a subversive person as defined in the Pennsylvania Loyalty Act" passed in 1951. After a public fight, covered in major newspapers in the state, both candidates won the right to appear on the ballot. The State Attorney General stated that he had decided the law was unenforceable "unless and until" court decisions holding such 'loyalty oaths' unconstitutional "are overturned." The law remains on the books.

86. In November 2008, Socialist Workers supporters who work at a garment shop in Los Angeles, California approached a coworker about becoming a subscriber to the *Militant* newspaper, which editorially supports the Socialist Workers candidates, including James Harris, the 2009 Socialist Workers candidate for Mayor of Los Angeles. The coworker was interested in the coverage of the paper, but said he was afraid to subscribe because he feared that subscribing would put him "on a list."

87. In November 2008, supporters of the Socialist Workers campaign were calling previous subscribers to the *Militant* newspaper to see if they wished to renew their subscription. One subscriber said that he had cancelled his subscription six months earlier "because of pressure he felt from others where he lives who are hostile to the paper."

88. In October 2008, a professor who had organized a presentation by the SWP's presidential candidate Róger Calero at a class at Rutgers University in Newark, New Jersey told a SWP campaign supporter who had accompanied Calero that she was interested in the *Militant* and its coverage of the campaign, but that she did not want to get a subscription because she "didn't want to end up on any government lists."

89. In October 2008, a student who attended a presentation by the SWP's presidential candidate Róger Calero at a class at Rutgers University in Newark, New Jersey told a SWP campaign supporter who had accompanied Calero that he was interested in the *Militant* and its coverage of the socialist campaign. He bought a single copy of the paper, but said he did not want to get a subscription because he was afraid that he would get on a FBI list and face government harassment.

90. In June 2008, supporters of the Socialist Workers 2008 campaign were gathering signatures in Seattle to place the party's candidates on the ballot in Washington. A young woman who spoke with the canvassers told them "I actually agree with a lot of what you are saying, but because I'm in the military I can't sign for a socialist candidate who is against the war in Iraq." She agreed that she had the right to sign, but stated that "they can make it hard on you and I don't need any trouble."

II. Analysis of City Ordinances and Municipal Codes

The original filing provided evidence of incidents occurring in eleven different cities or towns in which the police harassed or threatened arrest of SWP campaign supporters who were distributing noncommercial campaign materials in public spaces for their alleged violations of local regulations. We have reviewed the city ordinances and municipal codes for ten of these eleven locations¹ and have determined that in at least seven of the ten locations the SWP campaigners' activity was authorized by the local code and that the police had exceeded their authority. Moreover, in the three locations in which there were legal provisions requiring that individuals obtain a permit before distributing political literature, the police officers' actions clearly reveal that there was an anti-SWP animus in the selective application of these code provisions.

In Toledo, Ohio, where the police told SWP campaign supporters that it was prohibited to go door-to-door with their campaign materials and that they would be arrested if they continued, Toledo City Ordinances state that it is *lawful* for persons to hand or transmit newspapers and political literature to private premises as long as they are placed in such a manner as to prevent their being carried away by the elements. *See* Ex. 25;² *see also* Ex. K (Toledo City Ordinance Section 963.18(b), (b)(1)).

In Atlanta, Georgia, police told SWP supporters distributing noncommercial handbills on a street just outside the Georgia State University (GSU) campus that they needed either a city permit or permission from GSU, *see* Ex. 29; however, nothing in the Atlanta City Ordinances prohibits the distribution of handbills or unsolicited newspapers to any person. *See* Article XI, Sec. 74-607(a) (it is “*not* . . . a violation of this article to hand out or to distribute handbills or unsolicited newspapers to any person or persons”) (emphasis added) (attached as Ex. K). GSU’s Administrative Policy also allows persons and organizations to “engage in speech activities in . . . the city streets adjacent to campus buildings” and that both student and non-University organizations may “distribute literature and non-commercial pamphlets, handbills . . . [in] the city streets adjacent to campus buildings,” including during the days of the week and times when SWP supporters were distributing their materials. *See* Administrative Policy (K)(1)(b)(i); *see also* Ex. K (Administrative Policy (K)(2)).

In New York City, campus police informed SWP campaign supporters who had previously secured permission from the student government president to campaign at the Borough of Manhattan Community College in New York City, that they had to take their materials and leave the campus

¹ We were unable to locate the code for Philippi, West Virginia, Ex. 24.

² References in this submission to Exhibit Nos. 1-71 refer to the exhibits included with the SWP’s original

immediately allegedly based on an order from the dean. *See* Ex. 39. There are no City University of New York regulations prohibiting distribution of political materials on campus, and, to the contrary, the City University of New York policy states that “[e]ach member of the academic community or an invited guest has the right to advocate his or her position without having to fear abuse—physical, verbal, or otherwise—from others supporting conflicting points of view.” Ex. K (Policy 6.6 (Maintenance of Public Order)).

In Montclair, New Jersey, the police told SWP campaign supporters distributing campaign literature on a public sidewalk that they needed a permit to distribute political literature in Montclair, *see* Ex. 59; however, there are no restrictions in Montclair on the distribution of noncommercial literature in the streets and other public places. Section 178-3 of the Montclair Township Code that regulates the distribution of commercial and business advertising materials explicitly exempts “the lawful distribution of anything other than commercial and business advertising matter.” Ex. K.

On three separate occasions in Boston, Massachusetts, police officers told SWP supporters with a campaign table on the street that they had to move their tables, once because they were allegedly blocking a bus stop, even though they were in the front of the bus stop area, another time because they were allegedly soliciting within 10 feet of an ATM machine, and, most recently in October 2008, because they lacked an allegedly required permit for their table. *See* Exs. 42, 50, and 72. In Boston, no permit is required to distribute noncommercial materials, nor are there any other specific restrictions on the distribution of noncommercial materials, including in front of a bus stop area. *See* Ex. K (City of Boston Municipal Code 16-12.3 (“[n]o permit shall be required nor shall this ordinance [concerning permits for the distribution of *commercial* materials] operate to affect,

interfere with or in any way abridge the right of persons on the street to carry or display noncommercial show cards, placards or signs or to distribute non-commercial handbills, cards, circulars or papers other than newspapers”). Although there is a prohibition against “soliciting” within 10 feet of an ATM, the SWP campaigners’ distribution of political materials was not “soliciting” as defined by the Boston Code. *See* Ex. K (City of Boston Municipal Code 16-41.1 (“*Solicit* shall mean to request an immediate donation of money or other thing of value”).

In Philadelphia, Pennsylvania, police officers questioned, monitored and generally intimidated a SWP literature table on which there was a sign demanding “Justice for the Jena 6” which referred to 6 black high school students who were arrested and charged with attempted second-degree murder and conspiracy to commit murder in Jena, Louisiana. *See* Ex. 51. We reviewed the Philadelphia City Code and could not locate any ordinance that would have restricted SWP campaign supporters from setting up a noncommercial literature distribution table or that would have required them to obtain permission to distribute noncommercial literature.

In Albertville, Alabama, where police told SWP campaign supporters that they needed permission from the city to distribute noncommercial materials on public property outside Tyson Food, we reviewed the Albertville, Alabama city ordinances and could not locate any ordinance that would have required SWP campaign supporters to obtain such permission. *See* Ex. 52.

In each of the eleven locations, including the three in which there were code provisions that required individuals distributing political literature to obtain a permit (Chicago, Newark and Washington, D.C.), the evidence clearly shows that the police were targeting the SWP and its political message. For example, in Chicago, several police officers passed by an SWP campaign and literature table with a sign reading “Prosecute the killer cops. Stop police torturers” and two

policemen browsed through the SWP literature and read the sign before stating that the SWP supporters were in violation of a number of unidentified violations and that they had to take down the table and leave. *See* Ex. 56. In Newark, the police asked what the SWP supporters' sign stating "Jail the killer cops" referred to before telling them they had to take down their literature distribution table because they didn't have a permit. *See* Ex. 53.

In June 2008, the New York City police monitored and took photographs of participants, including SWP presidential candidate Róger Calero and Socialist Workers campaign supporters, who were peacefully participating in a demonstration in New York City in support of the "Cuban Five," five Cubans convicted by U.S. courts, despite a New York City police rule, issued in 2007 in response to long-standing litigation dating back to 1971, prohibiting such monitoring except "when it reasonably appears that unlawful conduct is about to occur, is occurring or has occurred during the demonstration." Ex. 36 (attached to this submission showing photographs of the peaceful march); Ex. L (*New York Times* article).

III. The Government's Long-Standing Use of Terrorism As a Justification to Monitor the SWP

In 1987, in *Socialist Workers Party, et al. v. Attorney General et al.*, 73 Civ. 3160 (S.D.N.Y.) (J. Griesa), the Government argued that it had a legitimate interest in accessing and using information concerning the SWP and the Young Socialists Alliance (including information obtained contrary to the law, as found by the Court), "to prevent acts of terrorism," including the use of information that "may be 10 to 30 years old." *See* Ex. M (Defendants' Memorandum on Proposed Order of Injunctive Relief, at 9 (S.D.N.Y. March 10, 1987)). The governmental need for access to and use of this information, the CIA maintained, was based upon "such situations ... [as] at a

minimum terrorism, counter intelligence, threats to U.S. government personnel and related categories." *See id.* (Affidavit of Lee E. Carle, Information Review Officer for the Directorate of Operations of the CIA, signed on March 4, 1987).

Using this very same justification today, the Government has expanded its legal authority to monitor and infiltrate domestic organizations and has created an atmosphere of public vigilance against terrorism that is highly critical of perceived dissent. In explaining a few months ago the need for changes to the Attorney General's Guidelines for Domestic FBI Operations, the Government argued that it must "mov[e] beyond a reactive model (where [FBI] agents must wait to receive leads before acting) to a model that emphasizes early detection, intervention and prevention of terrorist attacks, intelligence threats, and criminal activities."³ In some instances, the changes to the policing practices in the "fight against terrorism" has brought even police organizations, such as the New York Police Department's Intelligence Division and the FBI, into conflict over exactly what is the appropriate amount, and the proper justification for, surveillance and infiltration of the domestic organizations. *See Ex. O.*

Far from being outdated, the SWP's current request for exemption is highly relevant today even when only governmental practices and programs are considered. The public threats, harassment and reprisals that the government has taken against the SWP since 2002 – such as the unannounced visit by the FBI to SWP candidate David Arguello's home in California, Ex. 19, the conspicuous monitoring of SWP sponsored events such as the demonstration in New York City, Ex. 36, and unjustified harassment of SWP campaign tables and supporters, *see infra* – are eerily

³ Ex. N, at 5 (Statement Before the Senate Select Committee on Intelligence of Valerie Caproni (General Counsel, FBI) and Elisebeth Collins Cook (Assistant Attorney General, Office of Legal Policy, Department of Justice),

reminiscent of the methods employed by the government through its long history of harassment of the party.

These incidents become all the more alarming in the context of (a) government practices assertedly taken out of the same concern with terrorism that the government expressly has with the SWP and (b) disclosures of widespread police and FBI infiltration into, and government surveillance of, other protest and activists groups without detection, many of whom participate in the same demonstrations and other activities as does the SWP, as well as the increased government harassment of immigrants, from whom the SWP has won significant support. We have submitted a number of news articles from the past several years reflecting the fact that far from receding, government spying, use of informers, and disruption against political activists has been significantly expanded since the SWP's 2002 FEC exemption filing, often justified under the rubric of the need to ferret out those labeled by the authorities as domestic terrorists. *See* Ex. P (news articles documenting spying on and infiltration of protest groups); Exs. 63 & 64 (Hispanic population is an area where the SWP is concentrating substantial political work today).

These visible tactics by public officials combined with significant acts of violence and retribution by private citizens, such as the fire-bombing of the SWP campaign office in Pennsylvania, the firing of a projectile into the SWP campaign office in Los Angeles, the firing of SWP candidates Lisa Potash in Atlanta, Georgia, Ex. 20, Laura Anderson in Chicago, Illinois, Ex. 21, Jacob Perasso in St. Paul, Minnesota, Ex. 73, and SWP campaign organizer Cecelia Moriarity in Kent, Washington, Ex. 22, confirm that the harassment of the SWP, far from receding into the past, remains very prominent today.

IV. Fear of Harassment or Reprisal for Associating with the SWP Has Increased

The chilling effect of these threats, harassments and reprisals, and of the context in which they occur, is demonstrated by the increase over the last six years in reports of individuals throughout the country who expressed interest in SWP campaigns but declined to lend their support for fear of reprisal by the government or private citizens. *See* Ex. Q (Declaration of Norton Sandler, dated Dec. 14, 2008). We showed in the original submission that there was a constant and pervasive fear by numerous individuals in almost every state where the SWP campaigns throughout the country of associating with the SWP, including in populations such as in the Hispanic community where the SWP is active. Exs. 63 & 64. In addition to this showing, we provide evidence of a total of 12 specific declarations – seven in the original and five in the present submission – that substantiates the pervasiveness of this fear. Exs. 65-71, 85-89.

V. Additional Supporting Evidence for Incidents Described in the SWP's Previous Filing

Below, the SWP provides additional supporting evidence for several of the incidents described in its previous filing, including photographic evidence and articles that appear in the *Militant*.

In addition to confirming that these incidents took place, the *Militant's* reporting is significant because the publication is a central tool for introducing people to and allowing them to follow the SWP's campaigns. As a result, the people who are most likely to be interested in the SWP are also people who are acutely aware of the dangers of being associated with the SWP. *See* Ex. R (Declaration of Frank Forrestal, dated Dec. 14, 2008)

The supplemental evidence is briefly summarized below and arranged in paragraphs that

correspond to the numeration in the accompanying volume of exhibits.

2. In July 2005, a projectile was sent into the headquarters of the Los Angeles, California, Socialist Workers Party campaign, punching a hole in the storefront window and shattering glass up to thirty feet into the office. Supplemental evidence: article from the *Militant* reporting on the vandalism at the SWP election headquarters.

8. In June 2004, supporters of the SWP campaign were petitioning in Meridian, Mississippi, to put the party's presidential ticket on the ballot when they were told by a person that he wanted to "put a bullet in every one of your heads." Supplemental evidence: article from the *Militant* detailing efforts by the Klu Klux Klan to threaten a group of campaigners and "drive people away by hollering they should not be 'signing for communists.'"

15. In July 2007, members of the Minutemen harassed and threatened people coming to attend a public meeting at the Socialist Workers headquarters in Des Moines, Iowa, featuring a program entitled "Stop the raids! Legalize all immigrants now!", screaming "down with the Marxists, communists and socialists" and taunting "where's the militancy? We thought you were militant." Supplemental evidence: article from the *Militant* reporting on anti-socialist taunts.

20. In October 2005, Lisa Potash, Socialist Workers Party candidate for president of the Atlanta City Council, was fired from the Hormel Meats Corporation in Tucker, Georgia, one week after an article featuring her campaign appeared in the *Atlanta Journal Constitution*. Supplemental evidence: two articles from the *Militant* reporting on Ms. Potash's firing shortly after the article featuring her campaign appeared in the *Atlanta Journal Constitution*.

22. In March 2008, Cecelia Moriarity, a supporter of the Socialist Workers 2008 campaign who was fired from her job in Seattle, Washington, after she campaigned outside the plant with SWP

candidates, won unemployment compensation after her firing. She submitted evidence showing that her firing had been because of her political support for the SWP, including a copy of a Declaration she provided for the FEC on her firing. Unemployment investigators determined she had been fired for political reasons, and gave the company one month to respond. They never responded and Moriarty was granted unemployment. Supplemental evidence: additional declaration by Moriarty, including materials Moriarty submitted to the Washington Employment Security Department for unemployment benefits because she had been fired improperly.

23. In February 2006, the landlord of the Socialist Workers headquarters, a bank manager, in Price, Utah, threatened to evict the group, stating that he did business with a "lot of customers you are against." Supplemental evidence: two articles from the *Militant* reporting that the bank manager told supporters of the *Militant* that the SWP is against a lot of customers his bank does business with and they could go somewhere else "to peddle [their] poison."

36. In June 2008, SWP presidential candidate Róger Calero and Socialist Workers campaign supporters participated in a demonstration in New York City in support of the "Cuban Five," five Cubans convicted by U.S. courts, where they were monitored by the New York police, who took photographs of participants, including Calero and SWP supporters. Supplemental evidence: photographs of the peaceful march.

62. In August 2004, the *Jackson Advocate*, a weekly newspaper in Mississippi, printed an article that falsely claimed that the Socialist Workers campaign and its candidates for president and vice-president, Róger Calero and Arrin Hawkins, were attempting to deceive state officials and voters by running two stand-in candidates. Supplemental evidence: two articles from the *Militant*, one reprinting a letter to the editor of the *Jackson Advocate* protesting the paper's publication of Ms.

Harris's slanderous and false article and the other describing both Ms. Harris's article as well as another letter sent to the *Militant*, the *Jackson Advocate* and the President of the National Association of Black Journalists that sided with Ms. Harris and assailing Mr. Sandler's critique.

VI. Status As a Minor Political Party

It is a well-established constitutional principle that special consideration must be given to minor political parties with respect to FECA's disclosure requirements. See *2003 Advisory Opinion* at 3, citing *Buckley v. Valeo*, 424 U.S. 1 (1976) and *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87 (1982). Minor political parties are unique in that "the governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election." *Buckley*, 424 U.S. at 70. Because minor party candidates are unlikely in the foreseeable future to win an election, the governmental interest "in providing the FEC with data...is not sufficiently compelling to justify the injury resulting to important First Amendment rights." *Federal Election Commission v. Hall-Tyner*, 524 F.Supp. 955, 961 (S.D.N.Y. 1981), *aff'd* 678 F.2d 416 (2d. Cir. 1982).

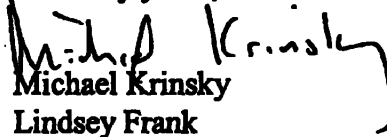
The results of the 2008 elections confirm that the SWP continues to be a minor political party. Just as in the national and state elections held between 2002 and 2007 as well as those held between 1996 and 2002 and 1992 and 1996 before that, no SWP candidate came close to winning in the November 2008 elections. Ex. S (Declaration of John Studer, dated Dec. 5, 2008) (no total yet available for write-in campaigns). SWP candidates for U.S. President and Vice-President received 9,827 votes, or approximately 0.007% of the national vote, in the ten states in

which they were registered. The one SWP candidate on the ballot for U.S. Senate received 8,395 votes, or approximately 0.3% of the vote, and none of the three SWP House of Representatives candidates on the ballot received more than 5,000 votes, or approximately 1% of the vote. The only SWP candidate on the ballot for state or municipal election received 3,047 votes, or approximately 5% of the vote, for Massachusetts State Senate. *Id.*

CONCLUSION

Based on the foregoing, and on our filing dated October 30, 2008, there is a reasonable probability that the compelled disclosure of the Socialist Workers Party's contributions and recipients will subject them to threats, harassment or reprisals from private citizens, organizations or various branches of the government. The factual showing made here evidencing continued threats, harassment and reprisals that, along with the continuing impact of the long history of governmental harassment, made all the more relevant by recent changes in the FBI Guidelines and local state and city law enforcement practices, is in all respects comparable to – and, in fact, *exceeds* in number of incidents of harassment and number of reports of fear of harassment or reprisal – the showing that was made in 2002. The SWP has again demonstrated that there is a reasonable probability that they will be subject to still more threats, harassment, or reprisals unless its campaign committees are granted a renewal of the exemption granted in the 2003 advisory opinion and that under constitutional principles established by the Supreme Court and recognized by the Commission, the SWP and its campaign committees cannot be compelled to disclose information concerning their contributors or recipients.

Sincerely yours,


Michael Krinsky
Lindsey Frank