

October 1, 2009

**AO DRAFT COMMENT PROCEDURES**

The Commission permits the submission of written public comments on draft advisory opinions when on the agenda for a Commission meeting.

DRAFT ADVISORY OPINION 2009-24 is available for public comments under this procedure. It was requested by John Ailey, treasurer on behalf of the Illinois Green Party.

Draft Advisory Opinion 2009-24 is scheduled to be on the Commission's agenda for its public meeting of Thursday, October 8, 2009.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00pm noon (Eastern Time) on October 7, 2009.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

**CONTACTS**

Press inquiries: Judith Ingram (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2009-24, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at [www.fec.gov](http://www.fec.gov).

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

**MAILING ADDRESSES**

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Washington, DC 20463

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**AGENDA ITEM**  
For Meeting of: 10-08-09

October 1, 2009

**MEMORANDUM**

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*  
General Counsel

Rosemary C. Smith *RCS*  
Associate General Counsel

Robert M. Knop *RMK*  
Assistant General Counsel

Cheryl A.F. Hemsley *CAH*  
Attorney

Subject: Draft AO 2009-24 (Illinois Green Party)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 8, 2009.

Attachment

1

2 ADVISORY OPINION 2009-24

3 Mr. John Ailey, Treasurer  
4 Illinois Green Party  
5 PO Box 471278  
6 Chicago, IL 60647

7

8 Dear Mr. Ailey:

9 We are responding to your inquiry regarding the status of the Illinois Green Party (the  
10 "ILGP") as a State party committee of a political party under the Federal Election Campaign Act  
11 of 1971, as amended (the "Act"), and Commission regulations. The Commission concludes that  
12 the ILGP qualifies as a State party committee because: (1) the Green Party of the United States  
13 (the "GPUS") qualifies as a political party; (2) the ILGP is part of the official GPUS structure;  
14 and (3) the ILGP is responsible for the day-to-day operations of the GPUS at the State level.

15 ***Background***

16 The facts presented in this advisory opinion are based on your letter received on August  
17 19, 2009, reports filed with the Commission, and information on the Illinois State Board of  
18 Elections website..

19 The ILGP's Bylaws ("Bylaws") detail various aspects of the functions, organization, and  
20 operation of the ILGP. As articulated in the Bylaws, the ILGP seeks to "to advance the green  
21 movement/party in Illinois based on the Ten Key Values through political and non-political  
22 means and support formation of Green Party locals." Bylaws, art. 1-B.

23 The Bylaws establish a Coordinating Committee, which is the primary policy-setting  
24 body of the ILGP. The Coordinating Committee is charged with approval of an annual party  
25 budget, internal procedures, and position statements which are consistent with the platform and  
26 bylaws. Bylaws, art. 5-A.

1           The Bylaws also create an Executive Committee consisting of a Chairperson, Vice  
2 Chairperson, Secretary, Treasurer, and Membership Steward, and which is the primary body  
3 carrying out the day-to-day administrative functions of the ILGP. Bylaws, arts. 6-A and B. The  
4 Executive Committee is accountable to the Membership of the ILGP and to the Coordinating  
5 Committee upon request. The Executive Committee authorizes expenditures consistent with the  
6 party's budget and fiscal policy; may authorize statements on behalf of the party; and proposes  
7 the agenda for the Coordinating Committee meetings. Bylaws, art. 6-K.

8           Further, the Chairperson of the Executive Committee is the primary spokesperson for the  
9 ILGP, and is responsible for convening meetings of the Coordinating and Executive committees.  
10 Bylaws, art. 6-L-1. The Bylaws also describe specific responsibilities of the Vice Chairperson,  
11 Secretary, and Treasurer. *See* Bylaws, arts. 6-M, N, and O.

12           The ILGP has several standing committees including those responsible for the Bylaws,  
13 the platform, party finances, elections, and fundraising. Bylaws, art. 8. Additionally, the ILGP  
14 holds annual Membership Meetings<sup>1</sup> for the purpose of conducting official business of the ILGP  
15 and for other possible uses such as presentations, workshops, and fundraising. At these  
16 Membership Meetings, the functions delineated to any party committee is subject to review by  
17 the Membership. Bylaws, art. 4-A.

18           The ILGP placed a candidate for President of the United States, former Representative  
19 Cynthia McKinney, on the 2008 Illinois general election ballot. The request also lists several  
20 other individuals that the ILGP also succeeded in placing on the 2008 general election ballot as  
21 candidates for the U.S. House of Representatives in five Ohio congressional districts. Those

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<sup>1</sup> The Coordinating Committee may call additional meetings in a given year. Bylaws, art. 4-A.

1 named include: Jerome Pohlen (3<sup>rd</sup> District), Jason Michael Wallace<sup>2</sup> (11<sup>th</sup> District), Rodger W.  
2 Jennings (12<sup>th</sup> District), Scott Summers (16<sup>th</sup> District), and Sheldon Schafer (18<sup>th</sup> District).<sup>3</sup>

3 The Commission has recognized the GPUS as a “political party” since 2001.  
4 See Advisory Opinion 2001-13 (Green Party of the United States). A letter from Mr. Brent  
5 McMillan, Executive Director of the GPUS, confirms the status of the ILGP as the State affiliate  
6 of the GPUS in Illinois.

7 ***Question Presented***

8 *Does the ILGP qualify as a State committee of a political party within the meaning of the*  
9 *Act and Commission regulations?*

10 ***Legal Analysis and Conclusion***

11 Yes, the ILGP qualifies as a State committee of a political party within the meaning of  
12 the Act and Commission regulations.

13 A “State committee” is an organization that, by virtue of the bylaws of a “political party,”  
14 is part of the official party structure and is responsible for the day-to-day operations of the  
15 political party at the State level, as determined by the Commission. 2 U.S.C. 431(15); 11 CFR  
16 100.14(a). A “political party” is an “association, committee, or organization that nominates a  
17 candidate for election to any Federal office whose name appears on the election ballot as the  
18 candidate of such association, committee, or organization.” 2 U.S.C. 431(16); 11 CFR 100.15.

19 The determination as to whether a State party organization qualifies as a State committee  
20 of a national political party turns on three elements: (1) the national party of which the State

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<sup>2</sup> The request refers to this candidate as Jason Mitchell Wallace. Reports filed with the Commission were for Jason Michael Wallace.

<sup>3</sup> Election results that list former Representative McKinney and these other individuals as Green candidates appear on the Illinois State Board of Elections website at <http://www.elections.state.il.us/ElectionInformation/GetVoteTotals.aspx> (last visited September 10, 2009).

1 party organization is a part must itself be a “political party”; (2) the State party organization must  
2 be part of the official structure of the national party; and (3) the State party organization must be  
3 responsible for the day-to-day operations of the national party at the State level. *See, e.g.*,  
4 Advisory Opinions 2009-16 (Libertarian Party of Ohio), 2008-16 (Libertarian Party of  
5 Colorado), and 2008-13 (Pacific Green Party of Oregon). The Commission therefore addresses  
6 each of these three elements in turn.

7 *(1) Qualification of GPUS as a Political Party*

8 First, the Commission must assess whether the national party qualifies as a “political  
9 party” under the Act and Commission regulations. 2 U.S.C. 431(15) and (16); 11 CFR 100.14  
10 and 100.15; *see* Advisory Opinions 2008-16 (Libertarian Party of Colorado), 2008-13 (Pacific  
11 Green Party of Oregon), and 2007-06 (Libertarian Party of Indiana). As noted above, the  
12 Commission has determined in a previous advisory opinion that the GPUS qualifies as a political  
13 party. *See* Advisory Opinion 2001-13 (Green Party of the United States). The Commission is  
14 aware of no factual changes that would alter that conclusion.

15 *(2) Status of ILGP as Part of Official GPUS Structure*

16 Second, the ILGP must qualify as part of the official party structure of the national party,  
17 pursuant to 11 CFR 100.14. In numerous advisory opinions, the Commission has looked to  
18 supporting documentation indicating the State party was part of the official party structure.  
19 *See e.g.*, Advisory Opinions 2008-16 (Libertarian Party of Colorado), 2008-13 (Pacific Green  
20 Party of Oregon), 2007-06 (Libertarian Party of Indiana), and 2007-02 (Arizona Libertarian  
21 Party). Here, the letter from Mr. Brent McMillan, Executive Director for the GPUS, suffices to  
22 establish the ILGP as part of the GPUS’s official party structure.

1           ***(3) Responsibility of ILGC for Day-to-Day Operations of GPUS in Illinois.***

2           **Third, the ILGP must maintain responsibility for the day-to-day operations of the GPUS**  
3 **at the State level. 2 U.S.C. 431(15); 11 CFR 100.14. In previous advisory opinions, the**  
4 **Commission has evaluated this third element by considering: (a) whether the organization has**  
5 **placed a “candidate” on the ballot (thereby qualifying as a “political party”); and (b) whether the**  
6 **bylaws or other governing documents of the State party organization indicate activity**  
7 **commensurate with the day-to-day functions and operations of a political party at the State**  
8 **level.<sup>4</sup> See Advisory Opinions 2009-16 (Libertarian Party of Ohio), 2008-16 (Libertarian Party**  
9 **of Colorado), and 2008-13 (Pacific Green Party of Oregon).**

10           **Ballot placement on behalf of a “candidate” is required because the requesting**  
11 **organization’s existence as a “political party” is necessary for State committee status. A State**  
12 **party organization must actually obtain ballot access for one or more “candidates,” as defined in**  
13 **the Act. See 2 U.S.C. 431(2), (15), and (16); 11 CFR 100.3(a), 100.14(a), and 100.15; see also**  
14 **Advisory Opinions 2009-16 (Libertarian Party of Ohio) and 2008-16 (Libertarian Party of**  
15 **Colorado).**

16           **Former Representative Cynthia McKinney, who was identified in the request, has**  
17 **received contributions or made expenditures in excess of \$5,000 according to disclosure reports**  
18 **filed with the Commission, and therefore satisfies the Act’s definition of “candidate.”**  
19 **See 2 U.S.C. 431(2); 11 CFR 100.3(a). Former Representative McKinney’s name was listed on**  
20 **the 2008 Illinois ballot as the GPUS’s candidate for President. Further, the ILGP also listed**  
21 **several other candidates for U.S. House on the 2008 ballot, each of whom also received**  
22 **contributions or made expenditures in excess of \$5,000 according to disclosure reports filed with**

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<sup>4</sup> Under Illinois State law, the ILGP has qualified as a “political party.” See 10 ILCS 5/7-2 and <http://www.elections.state.il.us/VotingInformation/PartyOfficials.aspx> (last visited September 10, 2009).



1 the Commission. These candidates were: Jerome Pohlen (3<sup>rd</sup> District), Jason Michael Wallace  
2 (11<sup>th</sup> District), Rodger W. Jennings (12<sup>th</sup> District), Scott Summers (16<sup>th</sup> District), and Sheldon  
3 Schafer (18<sup>th</sup> District).<sup>5</sup> Accordingly, the ILGP qualifies as a “political party” under the Act.

4 As discussed above, the Bylaws establish the organizational structure of the ILGC and  
5 detail specific responsibilities of party officers. *See* Bylaws, art. 6-L, M, N, and O. The Bylaws  
6 delineate activity commensurate with the day-to-day functions and operations of a political party  
7 on a State level. For example, the Bylaws establish an Executive Committee charged with the  
8 day-to-day administrative functions of the ILGP, and create several standing committees charged  
9 with functions such as the Bylaws, the platform, party finances, elections, and fundraising.  
10 Bylaws, arts. 6 and 8.

11 The Bylaws are consistent with the State party rules reviewed in previous situations  
12 where the Commission has recognized the State committee status of a political organization.  
13 *See, e.g.*, Advisory Opinion 2008-16 (Libertarian Party of Colorado) (finding that the  
14 Constitution and Bylaws of the Libertarian Party of Colorado sufficiently established the  
15 performance of day-to-day operations because the documents articulated a clear purpose,  
16 operating structure, and duties for officers). Therefore, the Bylaws satisfy the requirements of  
17 2 U.S.C. 431(15) and 11 CFR 100.14(a).

18 Accordingly, because all three elements of the definition of “State committee” are  
19 satisfied, the Commission determines that the ILGP qualifies as a State committee of a political  
20 party under the Act and Commission regulations.

21 This response constitutes an advisory opinion concerning the application of the Act and  
22 Commission regulations to the specific transaction or activity set forth in your request. *See*

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<sup>5</sup> Disclosure reports for former Representative McKinney and these other individuals can be found at [http://www.fec.gov/finance/disclosure/imaging\\_info.shtml](http://www.fec.gov/finance/disclosure/imaging_info.shtml).

1 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or  
2 assumptions presented and such facts or assumptions are material to a conclusion presented in  
3 this advisory opinion, then the requester may not rely on that conclusion as support for its  
4 proposed activity. Any person involved in any specific transaction or activity which is  
5 indistinguishable in all its material aspects from the transaction or activity with respect to which  
6 this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B).  
7 Please note the analysis or conclusions in this advisory opinion may be affected by subsequent  
8 developments in the law including, but not limited to, statutes, regulations, advisory opinions,  
9 and case law. All cited advisory opinions are available on the Commission's website at  
10 <http://saos.nictusa.com/saos/searchao>.

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On behalf of the Commission,

Steven T. Walther  
Chairman