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FEDERAL ELECTION COMMISSION  
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**AGENDA DOCUMENT NO. 16-53-B**  
**AGENDA ITEM**  
**For meeting of October 27, 2016**  
**SUBMITTED LATE**

October 26, 2016

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson  
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Subject: AO 2016-14 (11 Libertarian State Committees) Draft B

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 9:00 am (Eastern Time) on October 27, 2016.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

1 ADVISORY OPINION 2016-14

2

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5 203 South Union Street  
6 Suite 300  
7 Alexandria, VA 22314

**DRAFT B**

8

9 Dear Ms. Sirois:

10 We are responding to your request on behalf of the Libertarian Party of Alabama,  
11 Libertarian Party of Arkansas, Arizona Libertarian Party, Libertarian Party of Hawaii,  
12 Libertarian Party of Idaho, Libertarian Party of Maryland, Libertarian Party of Mississippi,  
13 Missouri State Libertarian Party, Libertarian Party of New Mexico, Libertarian Party of North  
14 Dakota, and Libertarian Party of Texas (the “Committees”) regarding their status as state  
15 committees of a political party under the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46  
16 (the “Act”), and Commission regulations. The Commission concludes that the Committees  
17 qualify as state committees of a national political party.

18 ***Background***

19 The facts presented in this advisory opinion are based on your advisory opinion request  
20 (“AOR”) submissions dated August 31 and September 8, 15, and 19, 2016; public filings with  
21 the Commission; and public filings with the applicable Secretaries of State and State Boards of  
22 Elections.

23 In 1979, the Commission determined that the Libertarian National Party (“LNP”) is a  
24 national political party. Advisory Opinion 1975-129 (National Committee of the Libertarian  
25 Party). The Libertarian National Committee, Inc. (“LNC”) is the national party committee of the  
26 LNP. The LNC’s Executive Director, Mr. Wes Benedict, has confirmed by letter that the  
27 Committees are all “chartered state-level affiliate parties” of the LNC. AOR121-124. As

1 discussed below, the governing documents of the Committees (*e.g.*, Bylaws, Constitutions,  
2 Rules) show their organizational structure and activities as Libertarian committees.

3 ***Question Presented***

4 *Do the Committees qualify as state committees of a political party within the meaning of*  
5 *the Act and Commission regulations?*

6 ***Legal Analysis and Conclusion***

7 Yes, the Committees qualify as state committees of a political party within the meaning  
8 of the Act and Commission regulations.

9 A “state committee” is an organization that, “by virtue of the bylaws of a political party . . . is  
10 part of the official party structure and is responsible for the day-to-day operation of the political party  
11 at the State level, . . . as determined by the Commission.” 11 C.F.R. § 100.14(a); 52 U.S.C.  
12 § 30101(15). A “political party” is an “association, committee, or organization that nominates a  
13 candidate for election to any federal office whose name appears on the election ballot as the  
14 candidate of such association, committee, or organization.” 52 U.S.C. § 30101(16); 11 C.F.R.  
15 § 100.15. The determination as to whether a state party organization qualifies as a state committee of  
16 a national political party turns on three elements: (1) the national party of which the state party  
17 organization is a part must itself be a “political party;” (2) the state party organization must be part of  
18 the official structure of the national party; and (3) the state party organization must be responsible for  
19 the day-to-day operation of the national party at the state level. *See, e.g.*, Advisory Opinion 2015-01  
20 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia). The Commission  
21 addresses each of these three elements in turn.

1           (1)     *Qualification of the LNP as Political Party*

2           The Commission has previously determined that the LNP qualifies as a political party.  
3     *See* Advisory Opinion 1979-125 (National Committee of the Libertarian Party). The  
4     Commission is aware of no factual changes that would alter that conclusion.

5           (2)     *Status of the Committees as Part of the Official Structure of the Libertarian*  
6                     *National Party*

7           To determine whether a state party organization is part of the official structure of a  
8     national party, the Commission evaluates documentation from the national party. *See, e.g.,*  
9     Advisory Opinion 2015-01 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of  
10    Virginia). The letters from Mr. Wes Benedict, Executive Director of the LNC (AOR121-124),  
11    confirm that the Committees are part of the official party structure of the LNP.

12          (3)     *Responsibility of the Committees for Day-to-Day Operation of the Libertarian*  
13                     *National Party at the State Level*

14          To determine whether a state party organization is responsible for the day-to-day  
15    operations of a national party at the state level, the Commission considers: (a) whether the state  
16    organization has placed a federal candidate on the ballot (thereby qualifying as a “political party”  
17    under 52 U.S.C. § 30101(16)); and (b) whether the bylaws or other governing documents of the  
18    state party organization indicate activity commensurate with the day-to-day functions and  
19    operations of a political party at the state level. *See, e.g.,* Advisory Opinion 2012-39 (Green  
20    Party of Virginia); Advisory Opinion 2012-36 (Green Party of Connecticut).

21                 (a)     *Candidate on the Ballot*

22          Because an organization must place a federal candidate on the ballot to qualify as a  
23    “political party,” *see* 52 U.S.C. § 30101(16); 11 C.F.R. § 100.15, the organization responsible for

1 the operation of a political party at the state level must obtain ballot access for a federal  
2 candidate to qualify as a “state committee.” *See* 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a); *see*  
3 *e.g.*, Advisory Opinion 2015-01 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green  
4 Party of Virginia); Advisory Opinion 2012-36 (Green Party of Connecticut).

5 Each of the Committees “assisted in placing” the LNP’s nominee for President, Gary  
6 Johnson, on the 2016 general election ballot in its state. AOR001, 005, 018, 034, 039, 052, 062,  
7 067, 083, 090, 096. Further, Gary Johnson received contributions or made expenditures in  
8 excess of \$5,000 according to disclosure reports filed with the Commission.<sup>1</sup> Mr. Johnson  
9 therefore satisfies the Act’s definition of a “candidate.” *See* 2 U.S.C. § 30101(2); 11 C.F.R.  
10 § 100.3(a).

11 (b) *Day-To-Day Functions and Operations*

12 In addition to gaining ballot access for a candidate for federal office, each of the  
13 Committees must also show, in its bylaws, constitution, or other governing documents, that it is  
14 responsible for activity commensurate with the day-to-day functions and operations of a political  
15 party at the state level.

16 For the reasons explained below, the governing documents of the 11 Libertarian  
17 committees that are parties to this request indicate activity commensurate with the day-to-day  
18 functions and operations of a political party at the state level and are similar to other state party  
19 rules that the Commission has found sufficient to qualify an organization for state committee  
20 status. *See, e.g.*, Advisory Opinion 2015-01 (Green-Rainbow Party); Advisory Opinion 2012-39  
21 (Green Party of Virginia); Advisory Opinion 2012-36 (Green Party of Connecticut); Advisory

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<sup>1</sup> *See, e.g.*, Gary Johnson 2016, FEC Report 3P at 2 (Sep. 20, 2016), [http://docquery.fec.gov/cgi-in/fecimg?\\_201609209032026391+0](http://docquery.fec.gov/cgi-in/fecimg?_201609209032026391+0) (showing net election cycle contributions totaling more than \$7,921,000).

1 Opinion 2010-22 (Working Families Party of Connecticut). Therefore, the Committees satisfy  
2 the requirement of being responsible for the day-to-day operation of the LNP at the state level  
3 pursuant to 52 U.S.C. § 30101(15) and 11 C.F.R. § 100.14(a).

4 The activity of each of the Committees is discussed in turn.

5 I) *Alabama*

6 Pursuant to its bylaws, the Libertarian Party of Alabama engages in various political  
7 party activities in Alabama. *See generally* AOR002-004. These activities include:  
8 “[d]isseminating information about libertarian ideals and principles; [n]ominating and promoting  
9 candidates for local, state, and national public office; [p]romoting and coordinating regional and  
10 local organizations throughout the state;” and “[s]electing and sending delegates to Libertarian  
11 Party national conventions.” AOR002.

12 Additionally, the bylaws set forth the duties of each of the organization’s officers, who  
13 are responsible for “promoting the activities” described above. *Id.* The organization’s governing  
14 Executive Committee sets the time, place, and schedule for the Annual Convention at which,  
15 among other business, candidates for public office are chosen by a majority vote “from among  
16 those put into nomination there.” AOR003.

17 II) *Arizona*<sup>2</sup>

18 The Arizona Libertarian Party, Inc.’s bylaws provide for the election of its officers.  
19 AOR012; *see generally* AOR006-017. These officers compose the Board of Directors, whose  
20 duties include: “1) ensuring that the Arizona Libertarian Party, Inc. has continuing countywide

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<sup>2</sup> Because the Arizona Libertarian Party, Inc. terminated after the Commission recognized it as a state party committee in Advisory Opinion 2007-02 (Arizona Libertarian Party), and because it subsequently re-registered with the Commission as a new committee, the Commission must reexamine whether the Arizona Libertarian Party, Inc. qualifies as a state committee of a political party. *See* Advisory Opinion 2015-01 (Green-Rainbow Party) (analyzing state-party status of committee that had terminated and re-registered after prior recognition as state party).

1 and continuing statewide ballot status, 2) recruiting Libertarians wishing to seek elective office,  
2 3) registering voters as members of the Arizona Libertarian Party, Inc., 4) educating the  
3 electorate on the virtues of Libertarian principles, and 5) bringing laws into closer agreement  
4 with Libertarian principles through the initiative and referendum process, through the legal  
5 challenge of unjust laws, and through the persuasion of sitting lawmakers.” AOR007.

6 These members of the Board of Directors also make up the Executive Board, whose main  
7 purpose is to fill any vacancy in a candidacy for U.S. Senator or other statewide candidacy,  
8 including “fil[ing] a nomination paper and affidavit complying with the requirements for  
9 candidates [under Arizona law] in order to fill the vacancy.” AOR013.

10 The Arizona Libertarian Party sends delegates to the LNP convention, and the LNP’s  
11 nominees for President and Vice President become the candidates of the Arizona Libertarian  
12 Party. *See* AOR014. The Arizona Libertarian Party’s Chairman is required to “send a letter to  
13 the Secretary of State directing [him or her] to place” the LNP’s candidate for President on the  
14 ballot for the next general election. AOR014.

15 *III) Arkansas*

16 Pursuant to its bylaws, the Libertarian Party of Arkansas engages in various political  
17 party activities in Arkansas. *See generally* AOR019-033. These activities include promoting  
18 and supporting Libertarian philosophy and ideals in the state; nominating and supporting  
19 candidates for the United States Congress and for state and local offices; and supporting the  
20 LNP’s candidates for President and Vice President. *See* AOR020.

21 The Libertarian Party of Arkansas’s bylaws: (1) commit the party to conducting its  
22 business “in such a manner as to establish and maintain an affiliation with” the LNP so that state  
23 delegates may be sent to the LNP’s national events and conventions; (2) require the party to hold

1 an annual state convention at which delegates to the LNP's convention are determined; and  
2 (3) establish rules, procedures and fees for the approval, selection, and support of Libertarian  
3 candidates for public office. Additionally, the bylaws allow for the creation of County Executive  
4 Committees to promote the party and its candidates within each county. *See* AOR021-022, 025-  
5 028.

6 *IV) Hawaii*

7 The Libertarian Party of Hawaii's bylaws specify duties for each of the organization's  
8 officers and for its Executive Committee. *See* AOR035-036; *see generally* AOR034-038. The  
9 Executive Committee, among other things, supervises, manages, and establishes the official  
10 program and order of business for state party conventions. AOR037. A platform may be  
11 adopted at the state convention. *See* AOR037-038. Further, the Executive Committee "may  
12 interview intended candidates for political office to determine their familiarity with the National  
13 or State Party" and whether they are "in general agreement with principles and ideals of the Party  
14 and its Platform." AOR036.

15 *V) Idaho*

16 Pursuant to its bylaws and constitution, the Libertarian Party of Idaho engages in various  
17 political party activities in Idaho. *See generally* AOR040-051. These activities include  
18 nominating candidates for political offices and promoting Libertarian Party activities and party  
19 membership. The Libertarian Party of Idaho holds conventions during even-numbered years at  
20 which the organization sets a platform, elects officers, nominates candidates for public office,  
21 and elects delegates to the LNP convention. *See* AOR046-048, 050. The Libertarian Party of  
22 Idaho also will not "endorse any candidate for President or Vice-President other than the  
23 candidate selected by the delegates at the national party convention." AOR048.



1                   VI)    *Maryland*<sup>3</sup>

2                   Pursuant to its constitution, the Libertarian Party of Maryland engages in various political  
3 party activities in Maryland. *See generally* AOR053-061. These activities include working “in  
4 affiliation with the [LNP] to build and promote the [Libertarian Party of Maryland], its  
5 principles, and platform; to nominate candidates to public office in Maryland who are in  
6 agreement with [Libertarian] principles, and support their election; and to engage in educational,  
7 social, and fundraising activities to support and advance the [Libertarian Party of Maryland’s]  
8 goals.” AOR053. Further, the constitution sets requirements and procedures for the nomination  
9 of candidates for public office and states that the LNP’s nominees for President and Vice  
10 President “shall be the nominees of the [Libertarian Party of Maryland].” AOR058.

11                   VII)   *Mississippi*

12                   Voting members of the Libertarian Party of Mississippi must make contributions of  
13 varying amounts to both the LNP and the Libertarian Party of Mississippi. *See* AOR063. The  
14 Libertarian Party of Mississippi holds an annual convention at which it may elect delegates to the  
15 LNP’s convention and nominate candidates for public office. *See* AOR066. The organization’s  
16 bylaws provide that the Libertarian Party of Mississippi’s executive committee shall set the time,  
17 place, and schedule of events for the convention. AOR065. The bylaws also provide for the  
18 executive committee to promote and authorize county and campus Libertarian organizations. *Id.*

19                   VIII)   *Missouri*

20                   Pursuant to its bylaws, the Missouri Libertarian Party engages in various political party  
21 activities in Missouri. *See generally* AOR071-082. These activities include promoting

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<sup>3</sup> The Libertarian Party of Maryland was administratively terminated after the Commission recognized it as a state committee in Advisory Opinion 2004-40 (Libertarian Party of Maryland), and it subsequently re-registered with the Commission as a new committee. *See supra* n.2.

1 Libertarian candidates for election to public office and promoting Libertarian ideas and  
2 philosophy. The bylaws state the Missouri Libertarian Party's affiliation with the LNP and  
3 require compliance with all applicable LNC and LNP rules and bylaws. *See* AOR071. The  
4 bylaws also provide that an Executive Committee comprising elected officers and district  
5 members is authorized to act on behalf of the State Committee between State Committee  
6 meetings. *See* AOR072. Finally, the bylaws allow for the organization of local affiliates, which  
7 must be recognized by the Missouri Libertarian Party. *See* AOR074-075.

8         The Missouri Libertarian Party holds annual conventions, which include nominating  
9 conventions during even-numbered years. The purposes of the nominating conventions are to  
10 encourage people to run for statewide office and to allow members to choose candidates to  
11 represent the Missouri Libertarian Party in statewide general elections. *See* AOR076. The  
12 bylaws set forth the procedures for nominating and electing these nominees. *See id.*

13                 IX)     *New Mexico*

14         Pursuant to its constitution and bylaws, the Libertarian Party of New Mexico engages in  
15 various political activities to promote specified Libertarian principles. *See generally* AOR084-  
16 089. These activities include (1) nominating, supporting, and electing candidates for public  
17 office; (2) lobbying officials and government bodies; and (3) engaging in educational and  
18 informational activities. *See* AOR084. For example, the organization's Executive Committee is  
19 authorized to call special conventions to nominate candidates for special elections, *see* AOR085,  
20 and its Central Committee oversees an annual convention at which the Libertarian Party of New  
21 Mexico may nominate candidates for public office and delegates to the LNP's convention under  
22 specified procedures. *See* AOR088. The Libertarian Party of New Mexico also adopts the  
23 LNP's platform as its own, except that the Libertarian Party of New Mexico may delete or add

1 any plank by a two-thirds vote. *Id.* Finally, the constitution and bylaws provide that county  
2 organizations meeting certain requirements may be recognized by the Libertarian Party of New  
3 Mexico as affiliates. *See* AOR086-087.

4 X) *North Dakota*

5 Pursuant to its bylaws, the Libertarian Party of North Dakota engages in various political  
6 party activities in North Dakota. *See generally* AOR091-095 (“LPND Constitution and  
7 Bylaws”). These activities include promoting “Libertarian candidates for election to public  
8 office,” promoting “libertarian ideas and philosophy,” affiliating with the LNP, and complying  
9 with all applicable LNP and LNC rules and bylaws. AOR091.

10 The organization set forth in the bylaws to engage in these activities includes elected  
11 officers and a State Committee with the authority to “pass and amend bylaws, raise money,  
12 maintain bank accounts, expend necessary funds raised, form committees, assign duties to State  
13 Officers and appoint agents to act on its behalf.” AOR092. The Executive Committee,  
14 comprising the elected officers and district members, is authorized to act on behalf of the State  
15 Committee between State Committee meetings. *Id.* Local organizations meeting certain criteria  
16 may organize county, legislative, senatorial, congressional, and judicial district committees. *See*  
17 AOR093-094. The Libertarian Party of North Dakota holds a state convention at least bi-  
18 annually, some of the purposes of which are to select delegates to the LNP convention, amend  
19 the Libertarian Party of North Dakota’s bylaws, and amend the Libertarian Party of North  
20 Dakota’s platform. *See* AOR094.

21 XI) *Texas*

22 Pursuant to its rules, the Libertarian Party of Texas engages in various political party  
23 activities in Texas. *See generally* AOR097-120. These activities include (1) nominating and

1 supporting candidates for the United States Congress and for state and local offices in Texas;  
2 (2) establishing and supporting county Libertarian affiliates across the state; and (3) affiliating  
3 with the LNP. AOR101.

4 The rules provide a detailed organizational structure to carry out these activities. The  
5 Libertarian Party of Texas has a State Executive Committee comprising elected officers,  
6 representatives from state senatorial districts, and members of the LNC representing Texas *ex*  
7 *officio*. AOR102. The Libertarian Party of Texas's structure also includes County Executive  
8 Committees and, when required, District Executive Committees. *See* AOR103-105.

9 The Libertarian Party of Texas holds conventions in even-numbered years. *See*  
10 AOR108-110. Business conducted at the conventions includes nomination of candidates for  
11 public office, election of delegates to the LNP's convention, election of Presidential electors, and  
12 work on the Libertarian Party of Texas's platform. *See* AOR110-111.

13

#### 14 *Conclusion*

15 The Commission determines that the Committees qualify as state committees of a  
16 national political party under the Act and Commission regulations because: (1) The LNP qualifies  
17 as a political party; (2) the Committees are part of the official structure of the LNP; and (3) the  
18 Committees are responsible for the day-to-day operation of the LNP at the state level.

19 This response constitutes an advisory opinion concerning the application of the Act and  
20 Commission regulations to the specific transaction or activity set forth in your request. *See*  
21 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or  
22 assumptions presented, and such facts or assumptions are material to a conclusion presented in  
23 this advisory opinion, then the requestors may not rely on that conclusion as support for their

1 proposed activity. Any person involved in any specific transaction or activity which is  
2 indistinguishable in all its material aspects from the transaction or activity with respect to which  
3 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.  
4 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be  
5 affected by subsequent developments in the law including, but not limited to, statutes,  
6 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available  
7 on the Commission's website.

8 On behalf of the Commission,

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12 Matthew S. Petersen  
13 Chairman