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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 13-47**  
**AGENDA ITEM**  
**For meeting of November 21, 2013**  
**SUBMITTED LATE**

November 15, 2013

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *LJS*  
Deputy General Counsel

Adav Noti *AN*  
Acting Associate General Counsel

Amy Rothstein *ALR by AN*  
Assistant General Counsel

Esther Gyory *EG by AN*  
Attorney

Subject: AO 2013-17 (Tea Party Leadership Fund) Drafts A and B

Attached are proposed drafts of the subject advisory opinion.

Members of the public may submit written comments on these draft advisory opinions. We are making these drafts available for comment until 12:00 pm (Eastern Time) on November 20, 2013.

Members of the public may also attend the Commission meeting at which these drafts 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>.

Attachment

1 ADVISORY OPINION 2013-17

2

3 Dan Backer, Esq.  
4 DB Capitol Strategies PLLC  
5 717 King Street  
6 Suite 300  
7 Alexandria, VA 22314

**DRAFT A**

8

9 Mr. Paul D. Kamenar  
10 Coolidge Reagan Foundation  
11 1629 K Street, N.W.  
12 Suite 300  
13 Washington, D.C. 20006

14

15 Dear Messrs. Backer and Kamenar:

16

We are responding to your advisory opinion request on behalf of the Tea Party  
Leadership Fund (“TPLF”) seeking an exemption from certain reporting and disclosure  
requirements of the Federal Election Campaign Act of 1971, as amended (the “Act”), and  
Commission regulations. The Commission concludes that TPLF is entitled to an  
exemption from the reporting and disclosure requirements of the Act and Commission  
regulations because it has demonstrated a reasonable probability that compelled  
disclosure would subject its supporters to threats, harassment, or reprisals.

22

23 ***Background***

24

The facts presented in this advisory opinion are based on your letter and  
attachments received on September 17, 2013, publicly available information from  
TPLF’s reports filed with the Commission, and TPLF’s website.

26

27

TPLF is a group in the Tea Party movement, which you describe as a nationwide  
movement that arose in 2009. No single Tea Party exists; instead, the Tea Party  
comprises numerous groups that share certain political values. Tea Party groups are  
active in the electoral process and recruit candidates to run for federal office.

30

1 TPLF registered with the Commission as a non-connected hybrid political  
2 committee in May 2012.<sup>1</sup> It engages in independent political advocacy and contributes to  
3 political candidates sharing Tea Party values. According to reports filed with the  
4 Commission, between its inception in May 2012 and June 30, 2013, TPLF received more  
5 than \$2,528,000 in contributions; contributed \$132,000 to federal candidates and political  
6 committees; and spent more than \$179,950 on independent expenditures.<sup>2</sup> TPLF's  
7 reports have identified approximately 600 contributors, each of whom contributed more  
8 than \$200 in a calendar year.

9 TPLF states that the Tea Party and its supporters have faced sustained harassment  
10 and hostility from government officials and private actors. TPLF included in its advisory  
11 opinion request over 1,400 pages of exhibits as evidence showing such harassment and  
12 hostility. The exhibits consist primarily of media reports but also include government  
13 records, correspondence, portions of congressional hearing transcripts, and other  
14 documents. TPLF states that these exhibits establish a reasonable probability that  
15 compelling it to disclose its contributors and the recipients of its disbursements in reports  
16 filed with the Commission will subject these persons to "continued threats, harassment,  
17 or reprisals from governmental officials or private parties," which will make supporters  
18 less likely to contribute to TPLF and will damage TPLF's advocacy efforts.

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<sup>1</sup> Statement of Organization, FEC Form 1, <http://query.nictusa.com/pdf/458/12030804458/12030804458.pdf> (last visited Oct. 29, 2013).

<sup>2</sup> See 2013 Mid-Year Report, amended, FEC Form 3X, <http://query.nictusa.com/pdf/714/13941453714/13941453714.pdf> (last visited Oct. 29, 2013); 2012 Year-End Report, FEC Form 3X, <http://query.nictusa.com/pdf/688/13940064688/13940064688.pdf> (last visited Oct. 29, 2013).

1 ***Question Presented***

2 *Is TPLF entitled to be exempt from the reporting and disclosure requirements of*  
3 *the Act and Commission regulations enumerated below?*

- 4 a. *Disclosure of the names and residential addresses, occupations, and*  
5 *employers of contributors to TPLF (2 U.S.C. § 434(b)(3)(A)).*
- 6 b. *Political, authorized, or affiliated committees making contributions or*  
7 *transfers to TPLF (2 U.S.C. § 434(b)(3)(B)).*
- 8 c. *Lenders, guarantors, or endorsers of loans to TPLF (2 U.S.C. § 434(b)(3)(E)).*
- 9 d. *Persons providing rebates, refunds, or other offsets to operating expenditures*  
10 *to TPLF (2 U.S.C. § 434(b)(3)(F)).*
- 11 e. *Persons providing any dividend, interest, or other receipt to TPLF (2 U.S.C.*  
12 *§ 434(b)(3)(G)).*
- 13 f. *Persons to whom expenditures, loans, loan repayments, disbursements, or*  
14 *contribution refunds or other offsets or committees to which expenditures,*  
15 *transfers, contributions, disbursements, or loans have been made (2 U.S.C.*  
16 *§ 434(b)(5)-(6)).*
- 17 g. *Submission and publication of electronic reports (2 U.S.C. § 434(a)(11)(B),*  
18 *(a)(12)).*
- 19 h. *Submission and publication of receipts and disbursements (2 U.S.C. § 434(e)).*
- 20 i. *Electioneering communication disclosure (2 U.S.C. § 434(f)).*
- 21 j. *Independent expenditure reporting (2 U.S.C. § 434(g)).*

1 ***Legal Analysis and Conclusions***

2 Yes, TPLF is entitled to an exemption from all of the above-enumerated reporting  
3 and disclosure requirements because it has demonstrated a reasonable probability that  
4 compelled disclosure would subject its supporters to threats, harassment, or reprisals.

5 The Act requires any nonconnected political committee, such as TPLF, to file  
6 reports with the Commission that identify individuals and other persons who make  
7 contributions to the committee aggregating more than \$200 during the calendar year.  
8 2 U.S.C. § 434(b)(3), (5), (6); *see also* 2 U.S.C. § 431(13); 11 C.F.R. § 104.8(a), (b).  
9 Nonconnected committees must also report all persons to whom the committee made  
10 expenditures and disbursements in an amount aggregating over \$200 in a calendar year,  
11 all political committees to whom the committee made a contribution, and all persons to  
12 whom the committee made a loan, loan repayment, contribution refund or other offset to  
13 contributions. 2 U.S.C. § 434(b)(5), (6); 11 C.F.R. § 104.3(3). Additionally, any person  
14 who makes disbursements for electioneering communications aggregating more than  
15 \$10,000 in a calendar year must report the disbursements within 24 hours. 2 U.S.C.  
16 § 434(f); 11 C.F.R. § 104.20(b). Finally, political committees that make independent  
17 expenditures in excess of certain amounts must report such expenditures within specific  
18 timeframes. 2 U.S.C. § 434(g); 11 C.F.R. § 104.4. The Commission makes all of the  
19 foregoing reports publicly available on its website. 2 U.S.C. § 434(a)(11)(B); 11 C.F.R.  
20 § 5.4.

21 In *Buckley v. Valeo*, the Supreme Court considered and rejected a facial challenge  
22 to the Act's disclosure requirements for political committees. 424 U.S. 1, 66-68 (1976).  
23 In so doing, the Court identified three governmental interests sufficiently important to

1 justify mandatory disclosure. First, “disclosure provides the electorate with information  
2 ‘as to where political campaign money comes from and how it is spent . . .’ in order to aid  
3 the voters in evaluating those who seek federal office.” *Id.* at 66-67. Second, “disclosure  
4 requirements deter actual corruption and avoid the appearance of corruption by exposing  
5 large contributions and expenditures to the light of publicity.” *Id.* at 67. Finally,  
6 “recordkeeping, reporting, and disclosure requirements are an essential means of  
7 gathering the data necessary to detect violations of the contribution limitations” in the  
8 Act. *Id.* at 67-68.

9         Although it rejected the facial challenge, the Supreme Court stated that the Act’s  
10 disclosure requirements might be unconstitutional as applied to a minor party that could  
11 show a “reasonable probability” that its contributors would be subjected to threats,  
12 harassment, and reprisals if their contributions were disclosed. *See id.* at 69-74  
13 (discussing *NAACP v. Alabama*, 357 U.S. 449 (1958)). The Court acknowledged that the  
14 damage caused by disclosure to the associational interests of these parties and their  
15 members could be significant, as “fears of reprisal may deter contributions to the point  
16 where the movement could not survive,” and “[t]he public interest . . . suffers if that  
17 result comes to pass, for there is a consequent reduction in the free circulation of ideas  
18 both within and without the political arena.” *Buckley*, 424 U.S. at 71. Accordingly, the  
19 Court held that the Constitution requires the government to exempt an entity from  
20 mandatory disclosure if that entity demonstrates “a reasonable probability that the  
21 compelled disclosure of [its] contributors’ names will subject them to threats, harassment,  
22 or reprisals from either Government officials or private parties.” *Id.* at 74. Sufficient  
23 proof could include, for example, specific evidence of harassment of members due to

1 their associational ties, or harassment directed against the organization itself through a  
2 pattern of threats or specific manifestations of public hostility. *Id.* A newly formed party  
3 that has no history upon which to draw may “offer evidence of reprisals and threats  
4 directed against individuals or organizations holding similar views.” *Id.*

5 Subsequently, in *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, the  
6 Supreme Court applied the standard set forth in *Buckley* to exempt the Socialist Workers  
7 Party from a state disclosure requirement, holding that the organization had demonstrated  
8 a reasonable probability that its supporters would face harassment and reprisals if their  
9 identities were disclosed.<sup>3</sup> 459 U.S. 87 (1982). In 1990, the Commission issued an  
10 advisory opinion granting the Socialist Workers Party a partial reporting exemption on  
11 the same grounds. Advisory Opinion 1990-13 (SWP). The Commission has renewed  
12 that exemption four times. Advisory Opinion 1996-46 (SWP); Advisory Opinion  
13 2003-02 (SWP); Advisory Opinion 2009-01 (SWP); Advisory Opinion 2012-38 (SWP).

14 In this case, TPLF has submitted more than 1,400 pages of exhibits showing the  
15 likelihood of harassment, threats, and reprisals against itself and its donors. As a newly  
16 formed group with little history of its own to draw upon, TPLF has offered evidence of  
17 reprisals and threats directed against other Tea Party members and groups, as well as  
18 against itself and its own members. *See Buckley*, 424 U.S. at 74. This evidence includes  
19 examples of death threats (Ex. F-15); arson (Ex. F-14); and opponents covering a parking  
20 lot with nails at a Tea Party rally (Ex. F-17). Additional exhibits describe eggs thrown at  
21 a Tea Party Express bus (Ex. F-11) and vandalism of a Tea Party-supported candidate's

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<sup>3</sup> The Court also extended the exemption to the names of recipients of disbursements, in addition to names of contributors as discussed in *Buckley*. *Brown*, 459 U.S. at 95; *see also FEC v. Hall-Tyner Election Campaign Comm.*, 678 F.2d 416, 421-22 (2d Cir. 1982).

1 campaign signs (Ex. F-12). TPLF has also submitted evidence of the economic  
2 consequences of this hostility, in that some individuals have been reluctant or have  
3 refused to contribute to TPLF and other Tea Party groups because they feared harassment  
4 or retribution from associating with these organizations. *See* Appendix G.

5       The Supreme Court in *Buckley* stated that entities seeking exemption must be  
6 allowed “sufficient flexibility” in showing injury or the threat of injury. 424 U.S. at 74.  
7 Here, the Commission concludes that TPLF has demonstrated a reasonable probability  
8 that adhering to the above-enumerated disclosure requirements would subject its  
9 supporters to threats, harassment, or reprisals. Having considered the information  
10 provided by TPLF, the Commission concludes that it is on par with the evidence that the  
11 Commission has found sufficient to grant to the Socialist Workers Party a partial  
12 exemption from certain disclosure provisions. *See, e.g.*, Advisory Opinion 2012-28  
13 (SWP) at 3-6 (noting evidence of intimidation and hostility directed towards Socialist  
14 Workers Party members). Therefore, pursuant to *Buckley* and *Brown*, the Commission  
15 concludes that TPLF is exempt from the above-enumerated disclosure provisions of the  
16 Act and corresponding Commission regulations. TPLF is accordingly exempt from  
17 disclosing not only its itemized contributors, but also its itemized disbursements, its  
18 electioneering communications, and its independent expenditures, all of which are  
19 reasonably probable to lead to reprisals against TPLF or individuals affiliated with it if  
20 disclosed.

21       This response constitutes an advisory opinion concerning the application of the  
22 Act and Commission regulations to the specific transaction or activity set forth in your  
23 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in

1 any of the facts or assumptions presented, and such facts or assumptions are material to a  
2 conclusion presented in this advisory opinion, then the requestor may not rely on that  
3 conclusion as support for its proposed activity. Any person involved in any specific  
4 transaction or activity that is indistinguishable in all its material aspects from the  
5 transaction or activity with respect to which this advisory opinion is rendered may rely on  
6 this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or  
7 conclusions in this advisory opinion may be affected by subsequent developments in the  
8 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

9

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On behalf of the Commission,

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Ellen L. Weintraub

15

Chair

16

17

1 ADVISORY OPINION 2013-17

2

3 Dan Backer, Esq.  
4 DB Capitol Strategies PLLC  
5 717 King Street  
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7 Alexandria, VA 22314

**DRAFT B**

8

9 Mr. Paul D. Kamenar  
10 Coolidge Reagan Foundation  
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13 Washington, D.C. 20006

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20 exemption from the reporting and disclosure requirements of the Act and Commission  
21 regulations because TPLF is not a minor party or organization.

22 ***Background***

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The facts presented in this advisory opinion are based on your letter and  
24 attachments received on September 17, 2013, publicly available information from  
25 TPLF’s reports filed with the Commission, and TPLF’s website.

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TPLF is a group in the Tea Party movement, which you describe as a nationwide  
27 movement that arose in 2009. No single Tea Party exists; instead, the Tea Party  
28 comprises numerous groups that share certain political values. Tea Party groups are  
29 active in the electoral process and recruit candidates to run for federal office.

1 TPLF registered with the Commission as a non-connected hybrid political  
2 committee in May 2012.<sup>1</sup> It engages in independent political advocacy and contributes to  
3 political candidates sharing Tea Party values. On its website, TPLF identifies six  
4 candidates whom it currently supports; they include two sitting members of the U.S.  
5 Senate (Senators Ted Cruz and Rand Paul) and two current members of the U.S. House  
6 of Representatives (Representatives Paul Broun and Steve Daines).<sup>2</sup> According to  
7 reports filed with the Commission, between its inception in May 2012 and June 30, 2013,  
8 TPLF received more than \$2,528,000 in contributions; contributed \$132,000 to federal  
9 candidates and political committees; and spent more than \$179,950 on independent  
10 expenditures.<sup>3</sup> TPLF's reports have identified approximately 600 contributors, each of  
11 whom contributed more than \$200 in a calendar year.

12 TPLF states that the Tea Party and its supporters have faced sustained harassment  
13 and hostility from government officials and private actors. TPLF included in its advisory  
14 opinion request over 1,400 pages of exhibits as evidence in support of its claim of  
15 harassment and hostility. The exhibits consist primarily of media reports but also include  
16 government records, correspondence, portions of congressional hearing transcripts, and  
17 other documents. TPLF states that these exhibits establish a reasonable probability that  
18 compelling it to disclose its contributors and the recipients of its disbursements in reports

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<sup>2</sup> Candidates—The Tea Party Leadership Fund, <http://www.theteapartyleadershipfund.com/candidates> (last visited Oct. 21, 2013).

<sup>3</sup> See 2013 Mid-Year Report, amended, FEC Form 3X, <http://query.nictusa.com/pdf/714/13941453714/13941453714.pdf> (last visited Oct. 29, 2013); 2012 Year-End Report, FEC Form 3X, <http://query.nictusa.com/pdf/688/13940064688/13940064688.pdf> (last visited Oct. 29, 2013).

1 filed with the Commission will subject these persons to “continued threats, harassment,  
2 or reprisals from governmental officials or private parties,” which will make supporters  
3 less likely to contribute to TPLF and will damage TPLF’s advocacy efforts.

4 ***Question Presented***

5 *Is TPLF entitled to be exempt from the reporting and disclosure requirements of*  
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- 12 d. *Persons providing rebates, refunds, or other offsets to operating expenditures*  
13 *to TPLF (2 U.S.C. § 434(b)(3)(F)).*
- 14 e. *Persons providing any dividend, interest, or other receipt to TPLF (2 U.S.C.*  
15 *§ 434(b)(3)(G)).*
- 16 f. *Persons to whom expenditures, loans, loan repayments, disbursements, or*  
17 *contribution refunds or other offsets or committees to which expenditures,*  
18 *transfers, contributions, disbursements, or loans have been made (2 U.S.C.*  
19 *§ 434(b)(5)-(6)).*
- 20 g. *Submission and publication of electronic reports (2 U.S.C. § 434(a)(11)(B),*  
21 *(a)(12)).*
- 22 h. *Submission and publication of receipts and disbursements (2 U.S.C. § 434(e)).*
- 23 i. *Electioneering communication disclosure (2 U.S.C. § 434(f)).*

1           j. *Independent expenditure reporting* (2 U.S.C. § 434(g)).

2           ***Legal Analysis and Conclusions***

3           No, TPLF is not entitled to an exemption from any of the above-enumerated  
4 reporting and disclosure requirements because it is not a minor party or organization.

5           The Act requires any nonconnected political committee, such as TPLF, to file  
6 reports with the Commission that identify individuals and other persons who make  
7 contributions to the committee aggregating more than \$200 during the calendar year.  
8 2 U.S.C. § 434(b)(3), (5), (6); *see also* 2 U.S.C. § 431(13); 11 C.F.R. § 104.8(a), (b).  
9 Nonconnected committees must also report all persons to whom the committee made  
10 expenditures and disbursements in an amount aggregating over \$200 in a calendar year,  
11 all political committees to whom the committee made a contribution, and all persons to  
12 whom the committee made a loan, loan repayment, contribution refund or other offset to  
13 contributions. 2 U.S.C. § 434(b)(5), (6); 11 C.F.R. § 104.3(3). Additionally, any person  
14 who makes disbursements for electioneering communications aggregating more than  
15 \$10,000 in a calendar year must report the disbursements within 24 hours. 2 U.S.C.  
16 § 434(f); 11 C.F.R. § 104.20(b). Finally, political committees that make independent  
17 expenditures in excess of certain amounts must report such expenditures within specific  
18 timeframes. 2 U.S.C. § 434(g); 11 C.F.R. § 104.4. The Commission makes all of the  
19 foregoing reports publicly available on its website. 2 U.S.C. § 434(a)(11)(B); 11 C.F.R.  
20 § 5.4.

21           In *Buckley v. Valeo*, the Supreme Court considered and rejected a facial challenge  
22 to the Act's disclosure requirements for political committees. *Buckley v. Valeo*, 424 U.S.  
23 1, 66-68 (1976). In so doing, the Court identified three governmental interests

1 sufficiently important to justify mandatory disclosure. First, “disclosure provides the  
2 electorate with information ‘as to where political campaign money comes from and how  
3 it is spent . . .’ in order to aid the voters in evaluating those who seek federal office.” *Id.*  
4 at 66-67. Second, “disclosure requirements deter actual corruption and avoid the  
5 appearance of corruption by exposing large contributions and expenditures to the light of  
6 publicity.” *Id.* at 67. Finally, “recordkeeping, reporting, and disclosure requirements are  
7 an essential means of gathering the data necessary to detect violations of the contribution  
8 limitations” in the Act. *Id.* at 67-68.

9         Although it rejected the facial challenge, the Supreme Court noted that the Act’s  
10 disclosure requirements might be unconstitutional as applied to a minor party that could  
11 show a “reasonable probability” that its contributors would be subjected to threats,  
12 harassment, and reprisals if their contributions were disclosed. *See id.* at 69-74  
13 (discussing *NAACP v. Alabama*, 357 U.S. 449 (1958)). The Court provided three reasons  
14 that such a showing might outweigh the government’s disclosure interests in the context  
15 of minor parties. First, “the governmental interest in disclosure is diminished when the  
16 contribution in question is made to a minor party with little chance of winning an  
17 election.” *Id.* at 70. Second, “[t]he Government’s interest in deterring the ‘buying’ of  
18 elections and the undue influence of large contributors on officeholders also may be  
19 reduced where contributions to a minor party or an independent candidate are concerned,  
20 for it is less likely that the candidate will be victorious.” *Id.* Finally, disclosure could  
21 cause significant harm to minor parties and supporters of independents because “these  
22 movements are less likely to have a sound financial base and thus are more vulnerable to  
23 falloffs in contributions.” *Id.* at 71. Even considering the diminished governmental

1 interest in disclosure by — and the risk of financial harm to — minor parties, however,  
2 the Court refused to grant a blanket disclosure exemption to such parties. *Id.* at 75.

3         Subsequently, in *Brown v. Socialist Workers '74 Campaign Comm. (Ohio)*, the  
4 Supreme Court applied the standard set forth in *Buckley* to exempt the Socialist Workers  
5 Party from a state disclosure requirement. *Brown v. Socialist Workers '74 Campaign*  
6 *Comm. (Ohio)*, 459 U.S. 87 (1982). The Court described the Socialist Workers Party as  
7 “a minor political party which historically has been the object of harassment by  
8 government officials and private parties.” *Id.* at 88. The Court based this  
9 characterization of the party as “minor” on its meager financial and electoral success:  
10 The Court noted that the party had “approximately 60 members in the State of Ohio,” its  
11 candidates “had little success at the polls,” and its “[c]ampaign contributions and  
12 expenditures in Ohio . . . averaged about \$15,000 annually.” *Id.* at 88-89. Accordingly,  
13 in finding that the demonstrated harassment of Socialist Workers Party members  
14 warranted exempting the party from reporting requirements, the Court confirmed that  
15 “the government’s interests in compelling disclosures are ‘diminished’ in the case of  
16 minor parties” because “the improbability of their winning reduces the dangers of  
17 corruption.”<sup>4</sup> *Id.* at 92 (citing *Buckley*, 424 U.S. at 70); *see also* Advisory Opinion  
18 2012-38 (Socialist Workers Party) at 8 (“[W]here the impact of the activities of the  
19 [Socialist Workers Party] and its supporters on federal elections is minimal because the  
20 possibility of [a Socialist] candidate winning an election is remote, the government’s  
21 interest in obtaining such information is lessened.”).

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<sup>4</sup> The Court also extended the exemption to the names of recipients of disbursements, in addition to names of contributors as discussed in *Buckley*. *Brown*, 459 U.S. at 95; *see also* *FEC v. Hall-Tyner Election Campaign Comm.*, 678 F.2d 416, 421-22 (2d Cir. 1982).

1           Subsequent decisions of the Supreme Court and lower courts have confirmed and  
2 applied the requirements set forth in *Buckley* and *Brown*: Disclosure exemptions are  
3 warranted only for minor parties that demonstrate a reasonable probability of threats,  
4 harassment, or reprisals. *See, e.g., McConnell v. FEC*, 540 U.S. 93, 198-99 (2003)  
5 (rejecting facial disclosure challenge under *Buckley* standard); *FEC v. Hall-Tyner*  
6 *Election Campaign Comm.*, 678 F.2d 416, 420-22 (2d Cir. 1982) (granting disclosure  
7 exemption to committee supporting Communist Party candidates and noting that minor  
8 political parties “rarely have a firm financial foundation”); *ProtectMarriage.com v.*  
9 *Bowen*, 830 F. Supp. 2d 914, 928-30 (E.D. Cal. 2011) (rejecting disclosure exemption for  
10 group that raised \$30 million and supported successful ballot initiative approved by 7  
11 million voters); *see also Doe v. Reed*, 823 F. Supp. 2d 1195, 1202 (W.D. Wash. 2011)  
12 (“[T]he Court has not found any case wherein a court granted an as-applied exemption to  
13 the disclosure laws to a group, organization, or political party that did not have minor  
14 status”), *appeal dismissed sub nom. Doe No. 1 v. Reed*, 697 F.3d 1235 (9th Cir. 2012).

15           Thus, in analyzing whether TPLF must be exempted from the reporting and  
16 disclosure requirements of the Act and Commission regulations, the Commission must  
17 determine as a threshold matter whether TPLF is a minor party or organization within the  
18 meaning of *Buckley* and *Brown*. Only if it were to meet that standard would the  
19 Commission proceed to the second stage of the analysis by weighing any evidence of  
20 violence or harassment directed at TPLF or its supporters against the governmental  
21 interest in obtaining identifying information about TPLF’s contributors and recipients of  
22 expenditures. Advisory Opinion 2012-38 (Socialist Workers Party) at 8 (“[T]he

1 Commission must first determine whether the SWP continues to maintain its status as a  
2 minor party.”).

3 As to this threshold question of whether TPLF is a minor party or organization,  
4 the Commission considers the same factors here that it considered in concluding that the  
5 Socialist Workers Party was a minor party in Advisory Opinion 2012-38 (Socialist  
6 Workers Party): electoral success and financial activity. Regarding electoral success,  
7 despite having run a candidate for President in every election since 1948 and numerous  
8 other candidates for federal, state, and local offices, no Socialist Workers Party candidate  
9 had ever been elected to public office in a partisan election. *Id.* at 2, 8. Here, by contrast,  
10 between its inception in May 2012 and June 30, 2013, TPLF has made contributions to  
11 many successful candidates currently serving in the U.S. Congress.<sup>5</sup> Indeed, of the six  
12 candidates whom TPLF specifically identifies on its website as candidates that the  
13 organization supports, four are sitting members of Congress. This significant electoral  
14 success — much of it occurring within just months of the group’s formation —  
15 distinguishes TPLF from the Socialist Workers Party and the organizations that courts  
16 have held to be exempt from disclosure requirements. *See Brown*, 459 U.S. at 88-89  
17 (noting party’s lack of “success at the polls,” including Senate candidate who received  
18 “less than 1.9% of the total vote”).

19 TPLF has also presented information indicating that the Tea Party movement in  
20 general has enjoyed broad electoral success nationwide. *See, e.g., Stan Veuger, Yes, IRS*  
21 *Harassment Blunted the Tea Party Ground Game*, Real Clear Markets, June 20, 2013

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<sup>5</sup> *See* 2012 and 2014 Two-Year Committee Summaries, <http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do> (last visited Oct. 30, 2013) (showing contributions to Representatives Michelle Bachman, Louie Gohmert, Timothy Huelskamp, Robert Pittenger, and Paul Ryan, and Senator Tim Scott, among others).

1 (Advisory Opinion Request, Ex. A-1 (rr)) (“[T]he movement brought the Republican  
2 Party some 3-6 million additional votes in House races.”). Publicly available information  
3 further demonstrates this success, as Tea Party groups characterize themselves as being  
4 aligned with dozens of sitting members of Congress. *See, e.g.,* Tea Party Caucus, *About*  
5 *Us*, <http://teapartycaucus-bachmann.house.gov/about-me/history> (last visited Nov. 12,  
6 2013) (“By the close of the 111th Congress, membership [in the Tea Party Caucus] had  
7 swelled to 52 Representatives.”). Thus, whether the Commission analyzes electoral  
8 success for TPLF alone or in the context of the Tea Party movement as a whole, the  
9 group has demonstrated electoral support well beyond that of a minor organization like  
10 the Socialist Workers Party.

11 The second factor in determining minor-party status for exemption purposes is  
12 financial activity. In Advisory Opinion 2012-38 (Socialist Workers Party), the  
13 Commission noted that only 118 people had made contributions to the Socialist Workers  
14 Party National Committee in 2012, for a total of approximately \$16,000; only 11 of those  
15 contributors gave more than the annual reporting threshold of \$200; no person had  
16 contributed more than \$200 during a calendar year to the committee from 2009 to 2011;  
17 and the committee had received contributions totaling only \$1,222 in that same three-year  
18 period. Advisory Opinion 2012-38 (Socialist Workers Party) at 3, 8. Thus, over a four-  
19 year election cycle, the committee took in only 11 reportable contributions and a total of  
20 approximately \$17,000.

21 Here, by contrast, TPLF has engaged in robust financial activity since its  
22 inception. In little more than a year — from May 2012 through June 2013 — TPLF  
23 reported receiving over \$2.5 million in contributions, including approximately 600

1 contributors who gave more than \$200 during a calendar year. TPLF also reported  
2 contributing \$132,000 to federal candidates and other political committees and spending  
3 over \$179,950 on independent expenditures. Such activity not only dwarfs that of the  
4 Socialist Workers Party, it places TPLF among the 75 highest grossing independent  
5 political committees in the 2014 election cycle to-date.<sup>6</sup> Furthermore, the Tea Party in  
6 general has also demonstrated financial success. *See* Fredreka Schouten, *Funding Surges*  
7 *to Group that Backed Budget Shutdown*, USA Today, Oct. 18, 2013, *available at*  
8 [http://www.usatoday.com/story/news/politics/2013/10/18/senate-conservatives-fund-](http://www.usatoday.com/story/news/politics/2013/10/18/senate-conservatives-fund-fundraising-september-obamacare/3014529)  
9 [fundraising-september-obamacare/3014529](http://www.usatoday.com/story/news/politics/2013/10/18/senate-conservatives-fund-fundraising-september-obamacare/3014529) (political committee supporting “Tea Party-  
10 aligned candidates” raised over \$2.1 million in September 2013); Monica Langley, *Anger*  
11 *at IRS Powers Tea-Party Comeback*, Wall St. J., Aug. 28, 2013, *available at*  
12 <http://online.wsj.com/news/articles/SB10001424127887323446404579009201942413702>  
13 (Tea Party-aligned political committee reported monthly contributions tripling between  
14 March and June 2013). Unlike the potentially diminished governmental interest in  
15 disclosure by minor parties with minimal financial activity, the government and the  
16 public retain their full interest in the statutorily mandated disclosure of the sources and  
17 recipients of the significant funding at issue in this request.

18 In light of the electoral success of TPLF’s supported candidates, coupled with  
19 TPLF’s extensive financial activity, the Commission concludes that TPLF is not a minor  
20 party or organization within the meaning of the Supreme Court decisions and prior

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<sup>6</sup> *See* 2014 Committee Summary, [http://www.fec.gov/data/CommitteeSummary.do?format=html&election\\_yr=2014](http://www.fec.gov/data/CommitteeSummary.do?format=html&election_yr=2014) (last visited October 29, 2013).

1 advisory opinions addressing disclosure exemptions. Therefore, TPLF is not exempt  
2 from the disclosure requirements of the Act and Commission regulations.

3       Because TPLF is not a minor party or organization, the Commission need not  
4 reach the question of whether TPLF or its donors face a reasonable probability of threats,  
5 harassment, or reprisals. But even if the Commission were to consider the exhibits that  
6 TPLF has provided as evidence of harassment and hostility, the Commission would still  
7 conclude that TPLF is not exempt from disclosure requirements. The instances of threats  
8 and harassment and the concerns about harassment expressed by TPLF's supporters (*see*  
9 Advisory Opinion Request, App'x G) are proportionately far fewer in relation to the  
10 number of such supporters than was the evidence of firings, workplace intimidation,  
11 threats, harassment, and police hostility directed against supporters of the Socialist  
12 Workers Party in Advisory Opinion 2012-38 (SWP). Moreover, any evidence of threats,  
13 harassment, and reprisals directed against the Tea Party movement in general would need  
14 to be weighed against the Tea Party's broad electoral success and financial support, as  
15 noted above. While the governmental interest in disclosure of the Socialist Workers  
16 Party's limited activity and uniformly unsuccessful electoral efforts is "very low," *id.* at  
17 10, the evidence presented here does not outweigh the stronger governmental interest in  
18 disclosure of TPLF's significant financial activity supporting many successful candidates  
19 and sitting members of Congress.

20       This response constitutes an advisory opinion concerning the application of the  
21 Act and Commission regulations to the specific transaction or activity set forth in your  
22 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in  
23 any of the facts or assumptions presented, and such facts or assumptions are material to a

1 conclusion presented in this advisory opinion, then the requestor may not rely on that  
2 conclusion as support for its proposed activity. Any person involved in any specific  
3 transaction or activity that is indistinguishable in all its material aspects from the  
4 transaction or activity with respect to which this advisory opinion is rendered may rely on  
5 this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or  
6 conclusions in this advisory opinion may be affected by subsequent developments in the  
7 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

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On behalf of the Commission,

Ellen L. Weintraub  
Chair