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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AGENDA DOCUMENT NO. 22-45-A
AGENDA ITEM
For meeting of September 15, 2022

August 19, 2022

MEMORANDUM

TO: The Commission

FROM: Neven F. Stipanovic for NFS
Associate General Counsel
Policy Division

Jessica Selinkoff
Acting Assistant General Counsel
Compliance Advice

Joshua Blume jb
Attorney

Margaret J. Forman MJF
Attorney

SUBJECT: Final Determination on Eligibility to Receive Primary Election Public Funds – Howie Hawkins and Howie Hawkins for Our Future, f/k/a Howie Hawkins 2020[1] (LRA 1132)

On June 7, 2022, the Commission made its initial determination that Mr. Howie Hawkins is ineligible to receive public matching funds for the 2020 presidential election under 26 U.S.C. § 9033(b)(2) of the Presidential Primary Matching Payment Account Act ("Matching Payment Act") and 11 C.F.R. §§ 9033.2, 9033.4(a), and 9033.10(b). On June 10, 2022, the Commission notified Mr. Hawkins and his committee, Howie Hawkins for Our Future, of the Commission's initial determination and advised them of the opportunity to respond within 30 days. *See* 11 C.F.R. §§ 9033.4(a)(2), 9033.10(b). Mr. Hawkins and his committee confirmed receipt of the notice by email on June 10, 2022, but, to date, have not submitted a response. *See* 11 C.F.R. § 9033.10(c).

At this time, we recommend that the Commission make a final determination that Mr. Hawkins is ineligible to receive public matching funds for the 2020 presidential

[1] *See* Howie Hawkins for Our Future, Amended Statement of Organization (Nov. 9, 2020) (changing committee name).

election. We also recommend that the Commission approve the attached Notice of Final Determination on Eligibility, which sets forth the legal and factual basis of the determination. *See* 11 C.F.R. § 9033.10(c).

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Make a final determination that Howie Hawkins is not eligible to receive payments of matching funds.

2. Approve the attached Notice of Final Determination on Eligibility.

3. Approve the appropriate letter.

Attachment
Notice of Final Determination on Eligibility

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
Mr. Howie Hawkins	)	LRA 1132
	)	

NOTICE
FINAL DETERMINATION ON ELIGIBILITY

I. SUMMARY OF FINAL DETERMINATION

The Federal Election Commission ("Commission") made a final determination on [DATE] that Mr. Howie Hawkins is ineligible to receive public matching funds for the 2020 presidential election under 26 U.S.C. § 9033(b)(2) of the Presidential Primary Matching Payment Account Act ("Matching Payment Act") and 11 C.F.R. §§ 9033.2, 9033.4(a), and 9033.10(c).

We reach this conclusion for the following reasons. Even if Mr. Hawkins was able to certify that he was seeking the nomination of a political party in at least two primary elections at the time he first submitted his letter of candidate agreements and certifications in August 2020[1]—a prerequisite, in addition to a threshold submission, for obtaining certification of eligibility to receive matching funds[2]—he could not so certify on the date, more than a year after the general election, on which he presented a threshold

[1] Submission of a letter attesting to the candidate's willingness to comply with certain prescribed conditions and containing certain certifications, including that the candidate is seeking the nomination of a political party, is the first step in the application for matching funds. 11 C.F.R. §§ 9033.1, 9033.2(a), (b)(1); *see also*. Attachment 2; 11 C.F.R. § 9033.2(a)(2) (Commission will not consider threshold submission until candidate satisfies certification requirements).

[2] *See* 26 U.S.C. § 9033(b); 11 C.F.R. § 9033.2(b)(1), (c); *see also* Presidential Election Campaign Fund and Presidential Primary Matching Fund, 44 Fed. Reg. 20,336, 20,338 (Apr. 4, 1979) (explaining that threshold submission requirement "is necessary for the Commission to determine whether the candidate has in fact established eligibility"); Presidential Primary Matching Fund, 48 Fed. Reg. 5224, 5227 (Feb. 4, 1983) (same).

submission. This Notice provides the factual and legal basis for the Commission's final determination.

II. FACTUAL AND LEGAL BASIS FOR FINAL DETERMINATION

A. Howie Hawkins's Application for Public Funds for the 2020 Presidential Election

On August 25, 2020, Mr. Hawkins and his committee, Howie Hawkins for Our Future, f/k/a Howie Hawkins 2020[3] (the "Committee"), submitted a letter of candidate and committee agreements and certifications ("9033 letter").[4] Mr. Hawkins also filed a threshold submission for Matching Fund payments.[5] On the following day, August 26, 2020, the Commission's Audit Division informally advised the Committee that its threshold submission was materially incomplete, in that it did not meet the Commission's formatting requirements.[6]

The Commission's Office of General Counsel reviewed the 9033 letter and concluded on October 2, 2020, that it met the regulatory requirements of 11 C.F.R. §§ 9033.1 and 9033.2, provided that the Committee make certain technical changes.[7] The Audit Division communicated the needed technical corrections to the Committee on the same day. The Committee submitted a revised 9033 letter to the Commission on November 22, 2020. The Commission's Audit Division shared the results of its

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[3] *See* Howie Hawkins for Our Future, Amended Statement of Organization (Nov. 9, 2020) (changing committee name).

[4] Attachment 1. *See* 26 U.S.C. § 9033 and 11 C.F.R. § 9033.1 (describing conditions of eligibility for Matching Fund payments).

[5] Attachment 1. *See* 11 C.F.R. §§ 9033.2(c); 9036.1.

[6] *See* 11 C.F.R. § 9036.1(b).

[7] Attachment 2 (concluding that Mr. Hawkins was seeking the nomination of a political party in two or more contests).

preliminary analysis of the threshold submission with the Committee in greater detail on December 1, 2020.[8] Because of the technical defects,[9] the Audit Division did not accept the submission or issue an acknowledgement of receipt for it.[10]

The Committee did not present a revised threshold submission until November 17, 2021, almost one year after the Audit Division returned the threshold submission to the Committee.[11]

B. The Commission's Initial Determination of Ineligibility

On June 7, 2022, the Commission made an initial determination that Mr. Hawkins is ineligible to receive public matching funds for the 2020 presidential election. The Commission notified Mr. Hawkins and the Committee of this determination on June 10, 2022, and advised them of the opportunity to respond within 30 days. *See* 11 C.F.R. §§ 9033.4(a)(2), 9033.10(b). Mr. Hawkins and the Committee both confirmed receipt of the notice by email on June 10, 2022,[12] but, to date, neither Mr. Hawkins nor the Committee has submitted a response.

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[8] Attachment 3.

[9] The Audit Division identified defects in the credit card contributions submitted by the Candidate, which lacked, among other information, contributors' street addresses. *See* 11 C.F.R. § 9036.1(b)(7)-(9); Guideline, Chap. II.C.1-2, at II-2 (subjecting all contributions made over the internet to billing address verification based on, at a minimum, "characters from the street address and the zip code" and requiring, *inter alia*, treasurer's attestation as to billing address verification system).

[10] *See* Commission's Guideline for Presentation in Good Order ("Guideline") (July 2007) at 3 and I-2. The Commission has incorporated the Guideline by reference into its regulations, thereby making it binding on candidates seeking matching funds. 11 C.F.R. § 9036.1(b)(7), (8); *see also* 11 C.F.R. § 9033.1(b)(9) (candidate agrees to abide by Guideline requirements when submitting matching fund requests as condition of eligibility to receive matching funds).

[11] Attachment 4 (cover letter, dated November 15, 2021, followed by supporting materials received on November 17, 2021).

[12] The notice was also sent via USPS certified mail, with receipt signed and confirmed by Mr. Hawkins on June 21, 2022. *See* Attachment 5.

C. The Commission's Final Determination That Howie Hawkins Is Not Eligible to Receive Public Funds for the 2020 Presidential Election

The Commission now makes a final determination that Mr. Hawkins is not eligible to receive public funds for the 2020 presidential election. The Commission's procedures for determining the eligibility of presidential candidates to receive matching funds are set forth in the Matching Payment Act at 26 U.S.C. §§ 9033, 9036; at 11 C.F.R. §§ 9033.1, 9033.2, 9033.4 and 9036.1, and in the Guideline and Commission Directive 24. These authorities address Commission determinations of eligibility both in the presidential election year itself and in the year preceding the presidential election year.[13]

To become eligible to receive public funds, a candidate must certify that he or she "is seeking" nomination by a political party for election to the office of President.[14] This certification is part of the initial application of a candidate, which also includes the letter of agreements, additional certifications, and the threshold submission; this initial application is the basis upon which the Commission certifies the candidate as eligible to receive matching payments in response to the submission of future qualifying applications.[15]

Once certified, an eligible candidate may apply for additional matching funds according to a Commission-established schedule.[16] Once awarded, public funds may be

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[13] *See* 11 C.F.R. § 9036.1(c)(2), (3); Guideline, at I-2 (providing for certification only, with payment delayed to the onset of the election year, when eligibility is determined in the preceding year). None of these authorities sets out procedures for Commission determinations of eligibility in the year following the presidential election year.

[14] 26 U.S.C. § 9033(b)(2); 11 C.F.R. § 9033.2(b)(1); *see also* 26 U.S.C. § 9032(2); 11 C.F.R. § 9032.2 (defining "candidate" as individual who seeks nomination).

[15] *See* 26 U.S.C. § 9033(b); 11 C.F.R. § 9033.2.

[16] *See* 11 C.F.R. § 9036.2(a) (eligible candidate may submit applications for additional matching funds according to Commission-established schedule).

used only for "qualified campaign expenses."[17] Candidates who have been previously certified as eligible to receive matching funds may not present additional applications for awards of matching funds after the first Monday in March of the year following the presidential election year.[18]

Despite the statutory and regulatory provisions governing the timing of, and procedures governing, initial applications for certifications of eligibility, additional submissions for payments, and final applications for payments, Commission regulations do not expressly establish a final date by which candidates must present a threshold submission.[19] Nonetheless, no candidate presenting a threshold submission in November of the year after the presidential election year, when both the primary and general elections have already been held, may reasonably be deemed to be "seeking" nomination for election the previous year, within the meaning of 26 U.S.C. § 9033(b)(2) or 11 C.F.R. § 9033.2(b)(1).[20] Nor would such a candidate be able to receive public funds to defray qualified campaign expenses on the basis of additional submissions for payment after that threshold submission date, due to the temporal limitations set out in 11 C.F.R. § 9036.6.

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[17] 11 C.F.R. § 9034.4(a).

[18] 11 C.F.R. § 9036.6. The regulations make clear that the reference to a "first-time" submission refers to first time "additional submissions" presented under 11 C.F.R. § 9036.2 and not threshold submissions. *See id.* (referring to "[c]andidates who have received matching funds and who are eligible to continue to receive such funds"). While the Commission certifies an initial payment of $100,000 corresponding to the required presentation in the threshold submission of contributions totaling more than $5,000 from residents of at least 20 states, 26 U.S.C. § 9033(b)(3); 11 C.F.R. § 9033.2(b)(3)(i), on submission of a qualifying threshold submission, the Commission has explained that the threshold submission must be viewed as the vehicle for a determination of eligibility rather than as a request for the payment of matching funds. *See* Guideline, at I-4, n.5 (noting as well that only $100,000 is certified even if threshold submission contains larger magnitude of qualifying contributions).

[19] *See* 11 C.F.R. § 9036.1(a) (providing that candidate may present threshold submission "[a]t any time after January 1 of the year immediately preceding the Presidential election year" without specifying end date).

[20] *Cf.* 11 C.F.R. § 9033.6 (listing factors serving as the basis of determination that candidate is no longer seeking nomination for election in more than one state).

This is so, in the Commission's judgment, even though 11 C.F.R. § 9036.1(a) states that a candidate may present a threshold submission at "any time" after January 1 of the year preceding the presidential election year. While a literal reading of this provision in isolation suggests that a candidate may present a threshold submission at any time, in the context of the matching program, such a submission must be made by a candidate "seeking" nomination at the time of application.[21] A non-contextual reading would place the Commission in the position of knowingly certifying a candidate as prospectively eligible to receive public funds in connection with that candidate's campaign for nomination when not only the campaign for nomination, but also the campaign for election to the office for which nomination is sought, had passed more than a year earlier. Such a certification would not only be absurd, but it would also contravene the purpose of the public financing program, which is to furnish assistance to viable candidates campaigning for the nomination.[22]

The absence of any provision for eligibility determinations after the presidential election year demonstrates that Mr. Hawkins cannot become eligible to receive public funds based on a threshold submission made in November 2021.

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[21] *Cf. Graham Cty. Soil and Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 289 (2010) ("Both parties acknowledge, as they must, that "[s]tatutory language has meaning only in context") (citation omitted); *Gustafson v. Alloyd Co.*, 513 U.S. 561, 568 (1995) (courts have a "duty to construe statutes, not isolated provisions").

[22] *See* S. Rep. No. 93-689 (2d Sess. 1974) (Feb. 21, 1974), at 5593 (explaining that threshold requirement of certain quantity of small contributions as prerequisite for eligibility useful as test of candidate support and that matching of first $100 [now $250] of contributions received "ensures that larger amounts of public assistance will only go to candidates who continue to demonstrate widespread support as the campaign develops."); *see also SEC v. C.M. Joiner Leasing Corp*., 320 U.S. 344, 350 (1943) ("[C]ourts will construe the details of an act in conformity with its dominating general purpose"); *cf. Pub. Citizen v. Dept. of Justice*, 491 U.S. 440, 454 (1989) ("Where the literal reading of a statutory term would 'compel an odd result,' we must search for other evidence of congressional intent to lend the term its proper scope.") (internal citation omitted).

There have been two narrow exceptions to the above reasoning, neither of which apply here. First, the Commission certified a candidate's eligibility in the year following the presidential election year in response to a court order.[23] The candidate in *LaRouche* had presented a fully qualifying letter of candidate agreements and certifications and threshold submission in the year preceding the presidential election year and the Commission had made an initial determination that he was ineligible in that year. Upon judicial review, the Court concluded that the Commission had improperly withheld the candidate's eligibility.[24] The Court therefore directed the Commission to make a *nunc pro tunc* eligibility determination to correct a previous wrong.[25] In this case, the Commission would not be remedying a prior wrong identified by court order; rather, it is addressing Mr. Hawkins's initial application to be determined eligible for public funds.

Second, the Commission certified then-candidate Mike Gravel as eligible to receive matching funds in December 2008, after the date of the general election, after he had submitted a qualifying letter of certifications and agreements and threshold submission in January 2008. The Commission's Office of General Counsel concluded in a June 2008 memorandum that because the Commission had been unable to act on the application when it was received due to the absence of a quorum, and Mr. Gravel was seeking the nomination of a political party at the time of the application, the Office would not deem the fact that Mr. Gravel was no longer seeking the nomination of a political party by the time the Commission considered his pre-election submission a reason to

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[23] *See LaRouche v. FEC*, 996 F.2d 1263, 1269 (D.C. Cir. 1993).

[24] *Id.* at 1266.

[25] *Id.* at 1269 ("we reverse and remand with instructions to certify and for such other proceedings as may be appropriate").

deem him ineligible.[26] Thus, although Gravel, like LaRouche, was not seeking the nomination of a political party at the time of his certification, he had, like LaRouche, presented a qualifying letter and threshold submission at a time when he was seeking the nomination. Here, in contrast, Mr. Hawkins had not presented a qualifying threshold submission, or indeed a threshold submission that had passed the first stage of Good Order review, during the presidential election year.

III. CONCLUSION

Based on the foregoing, the Commission makes a final determination pursuant to 26 U.S.C. § 9033(b)(2) of the Presidential Primary Matching Payment Account Act and 11 C.F.R. §§ 9033.2, 9033.4(a), and 9033.10(c), that Mr. Howie Hawkins is not eligible to receive payments of matching funds because he was not currently seeking the nomination of a political party in more than one state to be its presidential candidate in the 2020 presidential election at the time he presented the threshold submission more than a year after the general election. The Commission therefore denies the application for matching funds.

Attachments

1. Application of Mr. Howie Hawkins and Howie Hawkins 2020 for Matching Funds, received Aug. 25, 2020;
2. Memorandum from Neven F. Stipanovic to Patricia C. Orrock, Howie Hawkins 2020 – Letter of Candidate and Committee Certifications and Agreements (LRA 1132) (Oct. 2, 2020);
3. Email to Howie Hawkins 2020 Regarding Threshold Submission (Dec. 1, 2020);

[26] *See* Memorandum from Christopher Hughey to Commission, Mike Gravel for President 2008 Ineligibility Determination – Analysis of Response (LRA # 748) (June 20, 2008), at 2 n.1. The Office of General Counsel was at that time, however, recommending that the Commission deem Mr. Gravel ineligible to receive matching funds because he had expended more than $50,000 of his personal funds on his campaign when he submitted his application. *See* 26 U.S.C. § 9035(a). As noted, the Commission eventually certified Mr. Gravel as eligible to receive matching funds in December 2008.

4. Revised Threshold Submission Cover Letter Presented by Howie Hawkins 2020 (Nov. 15, 2021).
5. Confirmations of Receipt of Notice of Initial Determination on Eligibility in the Matter of Mr. Howie Hawkins (June 10 and 21, 2022).

Ellen L. Weintraub
Chairwoman
Federal Election Commission
999 E Street, N.W. Washington, D.C. 20463

RECEIVED
By Zuzana Pacious at 4:02 pm, Aug 25, 2020

August 24, 2020

Dear Madam Chairwoman,

I, Howie Hawkins, a candidate for President of the United States, in an effort to become eligible to receive Primary Matching Funds, certify and agree to the following per 11 CFR §9033.1 & 9033.2:

1. Pursuant to 11 CFR §9033.2(b)(2), I and/or my authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the expenditure limitations prescribed by 26 U.S.C. §9035 and 11 CFR §9035.

2. In accordance with 11 CFR §9033.l(b)(1), I acknowledge that I have the burden of proving that disbursements made by me and any of my authorized committee(s) or agents are qualified campaign expenses as defined at 11 CFR §9032.9.

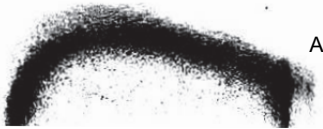
3. In accordance with 11 CFR §9033. I(b)(2), I and my authorized committee(s) will comply with the documentation requirements set forth in 11 CFR §9033.11.

4. Upon the request of the Commission, I and my authorized committee(s) will supply an explanation of the connection between any disbursement made by me or my authorized committee(s) and the campaign as prescribed by 11 CFR §9033.l(b)(3).

5. In accordance with 11 CFR §9033.I(b)(4), I and my authorized committee(s) agree to keep and furnish to the Commission all documentation for matching fund submissions, any books, records (including bank records for all accounts) and supporting documentation and other information that the Commission may request.

6. As provided at 11 CFR §9033.l(b)(5), I and my authorized committee(s) agree to keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section (including those required to be maintained under 11 CFR §9033.11), and other information that the Commission may request. If I or my authorized committee(s) maintains or uses computerized information containing any of the categories of data listed in 11 CFR §9033.12(a), the committee will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR §9038.l(b)(1) that meet the requirements of 11 CFR §9033.12(b). Upon request, documentation explaining the computer system's software capabilities shall be provided and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee(s) shall be made available.

7. As prescribed at 11 CFR §9033.l(b)(6), I and my authorized committee(s) will obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on my behalf by other political committees and organizations associated with me.



8. In accordance with 26 U.S.C. §9038 and 11 CFR §9033.l(b)(7), I and my authorized committee(s) shall permit an audit and examination pursuant to 11 CFR §9038 of all receipts and disbursements, including those made by me, all authorized committee(s) and any agent or person authorized to make expenditures on my behalf or on behalf of my authorized committee(s). I and my authorized committee(s) shall also provide any material required in connection with an audit, investigation, or examination conducted pursuant to 11 CFR §9039. I and my authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR §9038 and 11 CFR §9039.

9. Pursuant to 11 CFR §9033.l(b)(8), the person listed below is entitled to receive matching fund payments on my behalf, which will be deposited into the listed depository, which I have designated as the campaign depository. Any change in the information required by this paragraph shall not be effective until submitted to the Commission in a letter signed by me or the Treasurer of my authorized principal campaign committee.

Name of Person: Travis Christal
Mailing Address: 14525 McCarran Avenue, Apt. 6305, Fort Worth, TX 76155

Designated Depository: Cooperative Federal
Depository Address: 723 Westcott Street, Syracuse, NY 13205

10. Pursuant to 11 CFR §9033.!(b)(9), 11 CFR §9033.1{b)(10), and 11 CFR §9033.l(b)(11), I and my authorized committee(s) will:

(a) prepare matching fund submissions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order, including the provision of any magnetic media pertaining to the matching funds submission and which conforms to the requirements specified at 11 CFR §9031.12;

(b) comply with the applicable requirements of 2 U.S.C. §431 et seq. 26 U.S.C. §9031 et seq. and the Commission's regulations at 11 CFR Parts 100-300, and 9031-9039;

(c) pay any civil penalties included in a conciliation agreement or otherwise imposed under 2 U.S.C. §437g against myself, any of my authorized committee(s) or any agent thereof.

11. Pursuant to 11 CFR §9033.l(b)(12), any television commercial prepared or distributed by me or my authorized committee(s) will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.

12. In accordance with 11 CFR §9033.2(b), my authorized committee certifies that it has received matchable contributions totaling more than $5,000 in each of at least 20 states, contributions received were only from individuals who are residents of the state for which their contributions are submitted, and with respect to any one person do not exceed $250.00.

13. I and my authorized committee(s) shall comply with the applicable requirements of 52 U.S.C. 30101 et seq., 26 U.S.C. 9001 et seq., and the Commission's regulations at 11 CFR parts 100-300, and 9001-9012.

14. I and my authorized committee(s) shall pay any civil penalties included in a conciliation agreement or otherwise imposed under 52 U.S.C. 30109 against the candidate or any of my authorized committees or any agent thereof.

15. I certify, under penalty of perjury, that I will not knowingly make expenditures from my personal funds, or the personal funds of my immediate family, in connection with my campaign for the office of President in excess of $50,000 in the aggregate.

Additionally, in accordance with 11 CFR §9033.2(b)(l) and 11 CFR §9033.2(b)(3), I certify that:

1. I received the nominee of the Green Party of the United States for election to the Office of President from a convention of delegates elected by state-run or party-run primaries for 47 delegations from state Green parties and national Green party caucuses. The nominating convention of the Green Party of the United States was held on July 11, 2020. At the time of the convention, state Green parties affiliated with the Green Party of the United States were qualified for the ballot in 24 states:

California
Colorado
Connecticut
Delaware
District of Columbia (DC Statehood Green Party)
Florida
Hawaii
Illinois
Louisiana
Maine (Green Independent)
Massachusetts (Green-Rainbow Party
Michigan
Mississippi
Missouri
Montana
New Mexico
New York
North Carolina
Oregon (Pacific Green Party)
South Carolina
Texas
Utah
Vermont
West Virginia (Mountain Party)

2. I sought or am seeking the nomination of affiliated Green parties by independent nominating petition in 11 states where the Green Party is not yet qualified for the ballot:

Alaska (petitioning deadline: August 5, 2020)
Arkansas (petitioning deadline: August 3, 2020)
Georgia (petitioning deadline: August 14, 2020)

Iowa (petitioning deadline: August 14, 2020)
Kentucky (petitioning deadline: September 4, 2020)
Maryland (petitioning deadline: August 3, 2020)
Minnesota (petitioning deadline: August 18, 2020)
New Jersey (petitioning deadline: August 3, 2020)
Pennsylvania (petitioning deadline: August 3, 2020)
Virginia (petitioning deadline: August 21, 2020)
Wisconsin (petitioning deadline: August 4, 2020)

3. I sought or am seeking the nomination of two unaffiliated state Green Parties without ballot lines. Those unaffiliated state Green Parties will nominate by using the state's independent nomination petition procedure:

New Hampshire (petitioning deadline: August 5, 2020)
North Dakota (petitioning deadline: August 31, 2020)

4. I am seeking the nomination of the Independent Left Party of Rhode Island by independent nomination petition due September 4, 2020.

5. I sought or am seeking the nomination by independent nominating petition in nine states to be placed on the ballot as an independent. Those states are:

Alabama (petitioning deadline: August 20, 2020)
Arizona (petitioning deadline, September 4, 2020)
Idaho (petitioning deadline: August 24, 2020)
Kansas (petitioning deadline: August 3, 2020)
Nebraska (petitioning deadline: August 3, 2020)
Ohio (petitioning deadline: August 5, 2020)
South Dakota (petitioning deadline: August 4, 2020)
Tennessee (petitioning deadline: August 18, 2020)
Wyoming (petitioning deadline: August 25, 2020)

6. I am seeking ballot qualification in three states where we have filed challenges in court to existing ballot access petition and/or filing fee requirements:

Indiana (Green Party)
Nevada (independent)
Oklahoma (Green Party)

7. I sought the nomination of the California Peace and Freedom Party, which held its presidential nominating convention on August 1, 2020.

8. I am seeking the nomination of the Progressive Party of Oregon, which will hold its presidential nominating convention on August 24, 2020.

9. I am seeking the nomination of the Legal Marijuana Now Party of Minnesota, which will hold its presidential nomination convention on August 24, 2020

Based on the relevant statutes, historical precedent, and consultation with legal counsel, we believe that September 4, the last day of our petitioning drives to get on the ballot in three states, should be the date ending our campaign's eligibility of contributions for Primary Matching Funds.

However, we recognize that the FEC has taken the position that our last date of eligibility would be August 24, 2020, because our campaign is seeking the nomination of two state parties in two different states that hold their state presidential nominating conventions on that date.

Signed:

Howie Hawkins 8/24/2020

Howie Hawkins, Candidate Date

Travis Christal, CPA 8/24/2020

Travis Christal, Treasurer Date

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 2, 2020

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

Dayna C. Brown
Acting Assistant Staff Director
Audit Division

FROM: Neven F. Stipanovic NFS
Assistant General Counsel
Policy Division

Lorenzo Holloway
Assistant General Counsel
Compliance Advice

Joshua Blume jb
Attorney

SUBJECT: Howie Hawkins 2020 — Letter of Candidate and Committee Certifications and Agreements (LRA 1132)

I. INTRODUCTION

On August 26, 2020, the Audit Division forwarded to the Office of General Counsel ("OGC") a copy of the letter of candidate and committee certifications and agreements submitted by Howie Hawkins and Travis Christal in his capacity as treasurer of Howie Hawkins 2020 (the "Committee"). The letter is dated August 24, 2020, and the Commission received the letter on August 25, 2020. The Audit Division requested that this Office review the letter to ensure that it conforms to the Commission's regulations. OGC concludes that the letter will meet the regulatory requirements of 11 C.F.R.

§§ 9033.1 and 9033.2, subject to certain conforming changes[1] that the Committee would need to make, as we previously indicated to the Audit Division. We comment below on a legal issue raised by the letter.

To meet eligibility requirements for matching funds, a candidate must certify that he or she is seeking a presidential nomination of a political party in more than one state. 11 C.F.R. § 9033.2(b)(1). At the time Hawkins submitted his certification letter, he had already received the presidential nomination of the Green Party of the United States at the party's national nominating convention. This raises the question of whether Hawkins may certify that he is still seeking the nomination. We believe that Hawkins's certification is proper because at the time he submitted the letter he was still seeking the presidential nomination of a political party in two states, namely Kentucky and North Dakota, as we explain below.

II. AT THE TIME THE CANDIDATE SUBMITTED THE LETTER, THE CANDIDATE WAS SEEKING THE NOMINATION OF A POLITICAL PARTY IN MORE THAN ONE STATE.

A candidate begins his or her quest for primary election-related public funds by submitting a letter to the Commission, in which the candidate agrees to abide by certain conditions and certifies that he or she meets certain threshold criteria. *See* 26 U.S.C. § 9033; 11 C.F.R. §§ 9033.1, 9033.2. Among these conditions, the candidate must be able to certify that he or she is seeking the nomination of a political party in more than one state. 11 C.F.R. § 9033.2(b)(1). For the purpose of applying this requirement, a "political party" is defined as "an association, committee, or organization which nominates an individual for election to the office of President." *Id*. The Commission has previously recognized that a candidate may seek the presidential nomination of several different political parties and still be eligible to receive matching funds. *See* Advisory Opinion 1984-25 (Johnson) at 2-3 (concluding that a candidate who sought the nomination of a national party and several other state parties was eligible to receive matching funds); Advisory Opinion 1984-11 (Serrette) at 3 (concluding that a candidate who sought the nomination of several state parties was eligible to receive matching funds).

For a candidate to be deemed to be seeking the presidential nomination of a political party, the relevant party must have a procedure for holding a primary election as that term is defined in 11 C.F.R. § 9032.7. 11 C.F.R. § 9033.2(b)(1). Section 9032.7 defines "primary election" as an election held by a state or political party, including a run-off election, a nominating convention or a caucus: (1) for the selection of delegates to a national nominating convention of a political party; (2) for the expression of a preference for the nomination of presidential candidates; (3) for both purposes (1) and (2), or (4) to nominate a presidential candidate. 11 C.F.R. § 9032.7. "If separate primary

[1] These changes involve updating certain citations used to reflect the FECA's current location in title 52, correcting certain regulatory citations, and deleting a reference to certification requirements associated with general election, rather than primary election, public funding.

elections are held in a State by the State and a political party, the primary election . . . will be the election held by the political party." *See id.* § 9032.7(b).

Hawkins states in the letter that he sought the nomination of the Green Party of the United States, and received it at the party's national nominating convention on July 11, 2020.[2] This fact would not disqualify him from being eligible to receive matching funds, however, if he can establish that he was still seeking the nominations of a political party in other states at the time of his letter.[3] *See* Advisory Opinion 1984-25 (Johnson); Advisory Opinion 1984-11 (Serrette). Hawkins has certified that he was seeking the nomination of the Green Party "by independent nominating petition" in several states, including two states with deadlines for such petitions after the date of the letter. Those states are Kentucky (deadline September 4) and North Dakota (deadline August 31). Further, in both states, the Green Party has a procedure for holding a primary election[4] as required by section 9033.2(b)(1).[5]

The Kentucky Green Party is a state party affiliate of the Green Party of the United States, which, as noted, held its national nominating convention and nominated Hawkins on July 11. The Kentucky Green Party held a caucus on July 3 and elected delegates to the national nominating convention supporting Hawkins for President. *See* Kentucky Green Party Caucus Results (July 5, 2020), https://kygreenparty.org/wp-content/uploads/2020/07/KENTUCKY.GreenParty.Caucus_OpaVote_07032010.pdf That caucus qualified as a primary election, *see* 11 C.F.R. §§ 100.2(c)(3) (election held to nominate delegates to national nominating convention is primary election), 9032.7(a)(1)

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[2] The Commission previously recognized that the Green Party qualifies as a national committee of a political party. *See* Advisory Opinion 2001-13 (Green Party of the United States).

[3] The candidate also states that he sought the nomination of other political parties by independent nominating petition in states having ballot access deadlines that had passed at the time the candidate submitted the application. Because the candidate must be able to certify that he "is seeking" the nomination of a political party, none of these examples supplied by the candidate would meet the certification requirement.

[4] In *Buckley v.Valeo*, the Supreme Court considered a constitutional equal protection challenge contending in part that the statutory matching fund provisions were constitutionally invalid "because they do not provide funds for candidates not running in party primaries." 424 U.S. 1, 105 (1976). In rejecting those equal protection claims, the Court noted that the government may draw a distinction between primary election and petition drives: "The choice to limit matching funds to candidates running in primaries may reflect that concern about large private contributions to candidates centered on primary races and that there is no historical evidence of similar abuses involving contributions to candidates who engage in petition drives to qualify for state ballots. Moreover, assistance to candidates and nonmajor parties forced to resort to petition drives to gain ballot access implicates the policies against fostering frivolous candidacies, creating a system of splintered parties, and encouraging unrestrained factionalism." *Id*. at 106. The Commission, however, has not drawn this distinction, concluding instead that payments for general election ballot access are eligible expenses for matching funds purposes. *See* Advisory Opinion 1984-11 (Serrette); Advisory Opinion 1984-25 (Johnson). *Cf.* Advisory Opinion 2000-18 (Nader) at 2 (opting not to use ballot access drive deadlines to determine date of ineligibility, but using date of party nomination instead).

[5] The fact that both states may have already held primary elections is immaterial. The controlling question is whether the relevant political party in those states — in this case the Green Party — is holding a primary election. *See* 11 C.F.R. § 9032.7(b).

(same).[6] This raises the question of whether Hawkins was "seeking" the nomination of the Kentucky Green Party via the independent nomination petition, even though the Kentucky Green Party held a caucus on July 3.

We believe that the Kentucky Green Party's prior caucus does not preclude the candidate from using the independent nomination petition for the purpose of determining his eligibility to receive matching funds. Generally, independent candidates, or those "without nomination by a major party," may designate the last day to qualify for a position on the general election ballot as the primary election. 11 C.F.R. § 100.2(c)(4)(i).[7] Although the Kentucky Green Party held a caucus to elect delegates to the U.S. Green Party's national nominating convention, the Kentucky Green Party did not have ballot status under Kentucky law at the time the candidate submitted the letter.[8] Thus, pursuant to § 100.2(c)(4), it is open to the candidate to designate this later ballot qualification date as his primary election date for the Kentucky Green Party. Further, the Commission has concluded that a candidate's efforts to obtain ballot access for a political party — the Natural Law Party in that instance — in various states would be qualified campaign expenses even though the candidate obtained the party's nomination at its national nominating convention. *See* Advisory Opinion 1995-45 (Hagelin for President). Thus, ballot access expenses incurred after the date of the national nominating convention are considered to be incurred in connection with the candidate's campaign for nomination, *see* 11 C.F.R. § 9032.9(a)(2), and we see no reason why similar reasoning should not apply to the consideration of whether a nonmajor party candidate may be said to be seeking the nomination of a state party for the purpose of determining that candidate's eligibility to receive matching funds.

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[6] The Kentucky Green Party's delegates participated in the national convention, casting four delegate votes for Hawkins. *See* 2020 Presidential Nominating Convention, https://www.facebook.com/GreenPartyUS/videos/218031999340681/ (video of state by state delegate vote during national convention, showing Kentucky Green Party casting votes at approximately -1:59:12 through -1:58:57) (last visited Sept. 29, 2020).

[7] While the Commission's definition of primary election in 11 C.F.R. § 100.2(c)(4) is generally applicable to FECA, rather than the Presidential Primary Matching Payment Account Act (26 U.S.C. §§ 9031 et seq.) the Commission has relied upon this provision in determining other issues in the matching funds process – namely, to conclude that nominating petition costs incurred for ballot access are qualified campaign expenses that may be paid with matching funds and that ballot access deadlines affect the calculation of the date of ineligibility. *See* Advisory Opinions 1984-25 (Johnson), 1984-11 (Serrette) at 4 ("The regulations recognize that for nonmajor party candidates the requirements of State law governing qualification for a position on the general election ballot serve purposes similar to a primary election or other nominating process."). These authorities support the proposition that a nominating petition procedure, such as that employed in Kentucky and North Dakota and described below, would qualify as an election "to nominate a presidential candidate". *See* 11 C.F.R. § 9032.7(a)(4).

[8] As of this date, the Kentucky Green Party appears not to have ballot status, according to the Green Party of the United States website. *See* U.S. Green Party, https://www.gp.org/ballot_access (last visited Sept. 29, 2020) (containing map differentiating states where Green Party has ballot access from those in which candidate running as "write-in" candidate, and showing Kentucky as state where Green Party lacks ballot access).

Despite the prior caucus, Kentucky's independent nomination petition is the only procedure available to Hawkins that would allow him to obtain ballot access as the Green Party's nominee. Kentucky law recognizes three types of political associations. *See* Kentucky Revised Statutes § 118.015(1), (8), (9). "Political parties" are associations that received at least 20 percent of the vote in the preceding presidential election, while "political organizations" are associations that received at least two percent of the vote in the preceding presidential election. *Id.* § 118.015(1), (8). Political associations that do not achieve these thresholds are political groups. *Id.* § 118.015(9). Political groups gain ballot access in Kentucky by way of nominating petitions containing a certain number of signatures. *Id.* § 118.315(1), (2). *See also Libertarian Party of Kentucky v. Grimes*, 194 F.Supp.3d 568, 572-73 (E.D. Ky. 2016), *aff'd*, 835 F.3d 570 (6th Cir. 2016), *cert den.* 137 S. Ct. 2119 (2017). In 2016, Jill Stein, presidential candidate of the Green Party, received 13,913 votes out of a total of 1,924,149 votes cast in Kentucky, or 0.72% of the vote.[9] Thus, in 2020, the Kentucky Green Party would be classified as a political group under the above criteria and Hawkins would need to use the petition procedure to gain ballot access as the party's candidate. Accordingly, because the deadline for the independent nomination petition was after the date Hawkins submitted his letter, we conclude that Hawkins was seeking the Green Party's nomination in Kentucky.

North Dakota similarly has an independent nomination petition procedure that allows candidates to obtain ballot access as a political party's nominee.[10] In North Dakota, presidential candidates not affiliated with an "established" political party[11] may obtain the nomination of a political party by submitting a certificate of nomination by petition. *See* N.D. Cent. Code § 16.1-12-02 (names of nominees for President may appear on ballot with name of organization or political party with which candidate affiliates).[12] The North Dakota Green Party is not affiliated with an established political

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[9] *See* Kentucky 2016General Election Results, https://elect ky.gov/results/2010-2019/Documents/2016%20General%20Election%20Results.pdf (contains popular vote for each candidate) (last visited Sept. 21, 2020); Wikipedia, https://en.wikipedia.org/wiki/2016_United_States_presidential_election_in_Kentucky (contains popular vote for each candidate, total popular vote, and percentage of each candidate vote) (last visited Sept. 21, 2020).

[10] Unlike the Kentucky Green Party, the North Dakota Green Party is not affiliated with the U.S. Green Party and thus did not send delegates to the U.S. Green Party's national nominating convention. *See* U.S. Green Party, https://www.gp.org/state_parties (describing North Dakota Green Party as "currently unaffiliated") (last visited Sept. 25, 2020). *See also* Wikipedia, https://en.wikipedia.org/wiki/2020_Green_Party_presidential_primaries (describing North Dakota Green Party, among others, as "inactive" and "as such . . . either ineligible or unable to send delegates to the Green National Convention") (last visited Sept. 25, 2020). Thus, use of the North Dakota Green Party's ballot qualification deadline does not present the same legal issue as is presented by use of the Kentucky Green Party's ballot qualification deadline.

[11] There are three established political parties in North Dakota: the North Dakota Republican Party, the North Dakota Democratic-NPL Party, and the Libertarian Party of North Dakota. *See* N.D. Elections Unit, https://vip.sos.nd.gov/pdfs/Portals/running-president.pdf (last visited Sept. 17, 2020).

[12] Although the Secretary of State's fact page on the subject of running for President speaks of this process as available to candidates of "national" parties other than the established parties, *see* N.D. Elections

party and therefore must submit a certificate of nomination by petition to gain ballot access. In North Dakota, the independent nomination petition procedure is the only available route for Hawkins to obtain ballot access as the Green Party's nominee. Accordingly, because the deadline for the independent nomination petition was after the date Hawkins submitted his letter, we conclude that Hawkins was seeking the Green Party's nomination in North Dakota.

In sum, because the procedures in both states allow individuals, including Hawkins, to seek the presidential nomination of the Green Party, we conclude that the party procedures in both states constitute a primary election. Hawkins, therefore, may certify that he is seeking the nomination of a political party in more than one state.[13] *Id.*

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Unit., https://vip.sos.nd.gov/pdfs/Portals/running-president.pdf (last visited Oct. 1, 2020), § 16.1-12-02 does not appear to distinguish between national and other political parties.

[13] The Commission will have to decide whether the candidate is eligible to receive matching funds after September 4, the last of the various deadlines by which the candidate must submit qualifying nominating petitions for ballot access. The Commission has previously found a candidate eligible after the fact in the campaign of Mike Gravel for President 2008. In that matter, the candidate submitted his letter of agreements and certifications on January 10, 2008 and a threshold submission on August 4, 2008. The candidate was certified eligible to receive matching funds on December 10, 2008. The candidate's period of eligibility was determined to run from January 10, 2007 to the date on which the candidate was nominated by the Libertarian Party at its national convention. *See* Report of the Audit Division on Mike Gravel for President 2008 (Feb. 1, 2020), at 2 n.2 (approved Jan. 22, 2010).

Zuzana Pacious

From: Zuzana Pacious
Sent: Tuesday, December 1, 2020 8:28 AM
To: Travis Christal
Cc: Dayna Brown; creminsky@fec.gov
Subject: Howie Hawkins 2020 Threshold Submission - Results of Preliminary Review
Attachments: 1. Non_Matchable Contrirbutions by Exception Code .xlsx

Good morning, Travis:

The Office of General Counsel reviewed the committee's revised 9033 letter and informed us that the letter was satisfactory as amended.

As a result, we are getting back with you to provide the preliminary results of our review of the threshold submission.
Please know that, based on the documentation submitted, we were only able to fully review the matchability of contributions received via checks. Also, we were able to complete the review of occupation and name of employer. However, we were not able to verify the contributions received via credit cards due to the lack of documents and assurances that only permissible contributions were submitted for matching . The following is a list of items where additional documentation, clarification or corrections will be needed:

- The attached spreadsheet lists the contributions that are not matchable at this time, by the exception code.
- We also ask that the committee revise its treasurer certification letter dated 8.24.20. The letter has to contain the treasurer's attestation that a method of billing address verification is in place. The Presentation in Good Order Guideline also requires that the treasurer certify that the "contributions will not be accepted unless the billing verification system reports an exact match with the information provided by the contributor."
- Finally, as mentioned above, we request that the committee provide an electronic file for the Stripe credit card contributions reflecting, at minimum, the full name of the contributor, the amount of contributions, the last four digits of the credit card number (but not the card's expiration date) and the contribution batch number.

Please let us know if you have any questions. We are happy to discuss further if necessary.

Thank you.

Zuzana O. Pacious, CFE
Audit Manager
Audit Division
Federal Election Commission
C (202) 320-0395
P (202) 694-1347
F (202) 219-3483

Howie Hawkins for our Future (formerly known as Howie Hawkins 2020)
FEC Committee ID #: C00708024
PO Box 562
Syracuse, NY 13205

November 15, 2021

Shana M. Broussard
Chair
Federal Election Commission
999 E Street, N.W. Washington, D.C. 20463

Dear Madam Chair,

I am writing to notify you of our Matching Funds Threshold Re-submission (see enclosed electronic files) of our Threshold Submission from August 2020. Contained in this re-submission are 4,963 contributions from 2,939 contributors from 20 states that achieved the $5,000 threshold (AZ, CA, CO, CT, FL, IL, MD, MA, MI, MN, NJ, NY, NC, OH, OR, PA, TX, VA, WA, and WI) totaling $173,097.30, with $164,855.69 submitted for matching. Also included are an additional 1002 contributions from 652 contributors from other states totaling $29,856.69, with $28,351.93 submitted for matching.

I, Travis Christal, as the Treasurer of Howie Hawkins for our Future (formerly known as Howie Hawkins 2020), hereby certify that the information contained in the Committee's Matching Funds Threshold Re-submission is complete and accurate. The submission lists contributions from March 19, 2019 to July 24, 2020 which were deposited into our designated depositories during the time period March 25, 2019 to July 24, 2020.

I also certify this Threshold Re-submission has been prepared in accordance with the Commission's Guideline for Presentation in Good Order.

I further certify that a method of billing address verification is in place for credit card contributions. Only credit card contributions where the billing address verification system verifies an exact match with the address information provided by the contributor have been accepted; this was accomplished thusly: for transactions that were processed via Stripe, Stripe forwarded the contributor information, including the address that was provided by the contributor, to the bank (i.e. Visa, MasterCard, etc.), and only transactions that were authorized by the bank were charged. For transactions that were processed via PayPal, only transactions that passed PayPal's proprietary verification checks were authorized.

Signed: Travis Christal 11/15/2021

Travis Christal, CPA — Date
Treasurer, Howie Hawkins for our Future
November 15, 2021

From: Howie Hawkins
To: Jessica Selinkoff
Cc: travis@h[redacted]; travischristal@[redacted] Joshua Blume
Subject: Re: FEC Initial Determination on Eligibility -- Howie Hawkins
Date: Friday, June 10, 2022 3:50:27 PM

This is to confirm I received your emai.

— Howie Hawkins

> On Jun 10, 2022, at 12:01 PM, Jessica Selinkoff <JSelinkoff@fec.gov> wrote:
>
> Mr. Christal and Mr. Hawkins,
>
> The Federal Election Commission has made an initial determination that Mr. Hawkins is not eligible to receive payments of matching funds, under 11 C.F.R. § 9033.4(b). I am attaching an electronic copy of the notification setting forth the basis for the Commission's determination. It is also being sent by USPS Certified Mail.
>
> I would appreciate an email reply confirming receipt.
>
> Thanks so much,
> Jessica
>
> _____
> Jessica Selinkoff
> Acting Assistant General Counsel – Compliance Advice
> Federal Election Commission
> (202) 694-1527
>
> <6.10.2022 Final Notice of Initial Determination (LRA 1132).pdf>

From: Travis Christal
To: Jessica Selinkoff
Subject: Re: FEC Initial Determination on Eligibility -- Howie Hawkins
Date: Friday, June 10, 2022 12:31:20 PM

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confirmed

On Fri, Jun 10, 2022 at 12:01 PM Jessica Selinkoff <JSelinkoff@fec.gov> wrote:

> Mr. Christal and Mr. Hawkins,
>
> The Federal Election Commission has made an initial determination that Mr. Hawkins is not eligible to receive payments of matching funds, under 11 C.F.R. § 9033.4(b). I am attaching an electronic copy of the notification setting forth the basis for the Commission's determination. It is also being sent by USPS Certified Mail.
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> I would appreciate an email reply confirming receipt.
>
> Thanks so much,
>
> Jessica
>
> ———————————————————
>
> Jessica Selinkoff
>
> Acting Assistant General Counsel – Compliance Advice
>
> Federal Election Commission
>
> (202) 694-1527

From: Travis Christal
To: Jessica Selinkoff
Cc: Joshua Blume; howie.hawkins@[redacted] travis@[redacted]
Subject: Re: FEC Initial Determination on Eligibility -- Howie Hawkins
Date: Friday, June 10, 2022 12:31:47 PM

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confirmed

On Fri, Jun 10, 2022 at 12:01 PM Jessica Selinkoff <JSelinkoff@fec.gov> wrote:

> Mr. Christal and Mr. Hawkins,
>
> The Federal Election Commission has made an initial determination that Mr. Hawkins is not eligible to receive payments of matching funds, under 11 C.F.R. § 9033.4(b). I am attaching an electronic copy of the notification setting forth the basis for the Commission's determination. It is also being sent by USPS Certified Mail.
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> ———————————————————
>
> Jessica Selinkoff
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> Acting Assistant General Counsel – Compliance Advice
>
> Federal Election Commission
>
> (202) 694-1527

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Federal Election Commission
1050 First Street, N.E.
Washington, DC 20463

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- Attach this card to the back of the mailpiece, or on the front if space permits.

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Travis Christal, Treasurer
Howie Hawkins for Our Future
P.O. Box 562
Syracuse, NY 13205

9590 9402 4201 8121 0803 00

2. Article Number *(Transfer from service label)*

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A. Signature

X Howie Hawkins ☐ Agent ☒ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery 6/21/22

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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- ☐ Adult Signature Restricted Delivery
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- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
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- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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