

August 15, 2008

Ms. Laura Sinram, Senior Campaign Finance Analyst
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RE: Response to Request for Information - Amended Statement of Organization
Democratic State Central Committee of California - Federal (ID# C00105668)

Dear Ms. Sinram:

This letter is in response to your July 16, 2008 request for information regarding the amended Statement of Organization filed by the State Committee on May 19, 2008.

Your letter requested that the Committee amend its Statement of Organization to disclose all affiliated committees or provide further clarification as to why these affiliated relationships do not exist.

As we explain more fully below, the Democratic State Central Committee of California does not believe it is legally affiliated with other committees and an amendment to its Statement of Organization is not required.

LEGAL SUMMARY

The Federal Election Campaign Act provides that political committees established, financed, maintained, or controlled by the same person or group of persons are affiliated for contribution limitation purposes. (2 U.S.C. 441a(a)(5); 11 CFR 100.5(g)(2) and 110.3(a)(1)). By regulation the FEC has provided that political committees which are affiliated with other committees for contribution limitation purposes must disclose those committees on its Statement of Organization as "affiliated." (11 CFR 102.2(b).)

Commission regulations establish a presumption of affiliation for contribution limitation purposes when one party committee has "established, financed, maintained or controlled" another party committee. (11 CFR 110.3(b)(3).) For the presumption to apply the FEC must show as a threshold matter that one party committee has in fact "established, financed, maintained or controlled" another party committee. Without first establishing one of these four factors the presumption simply does not arise.

The Act, FEC regulations and FEC advisory opinions do not define what activities would constitute "establish, finance, maintain or control."

The FEC regulations provide that, if the presumption is established, the party committee may rebut it by showing (i) the political party committee in question does not receive funds from any other political committee established, financed, maintained, or controlled by another party unit and (ii) the political party committee does not make its contributions in cooperation, consultation or concert with, or at the request or suggestion

of any other party unit or political committee established, financed, maintained, or controlled by another party unit. (11 CFR 110.3(b)(3).)

Thus, party organizations may easily rebut the presumption by showing no funds have flowed between them and they don't make contributions in concert. However, the mere fact that funds may have been received between party organizations does not give rise to presumption of "financing" as that term is used in Section 110.3(b). Stated another way, the FEC must first prove that one organization "finances" another in order to create the presumption of affiliation, but merely receiving funds is not enough to meet that initial burden.

As explained more fully below, because none of the party committees within California "establish, finance, maintain or control" any other party committees, the presumption of affiliation never arises. None of the factors cited in your letter of July 16, 2008, are sufficient to suggest otherwise.

RESPONSE TO REQUEST FOR INFORMATION

1. Vendor Payments to local organizations for voter registration.

Your letter pointed out that over the last several election cycles, the State Committee's reports have disclosed "transfers" to county and local party organizations for the purpose of registering voters.

Payments made to County Central Committees and other local organizations are not "transfers." These payments are made to local organizations as direct payment for services rendered by local organizations in providing voter registration services. Payments are made as part of an arms-length agreement for these services. The payments are no different than if the State Committee hired a private vendor to engage in a service of registering Democratic voters in the state. The payments are made without regard to whether the local organizations sponsor a registered Federal committee. In fact, the majority of payments are made to organizations which do not qualify as political committees under Federal law.

To the extent the payments are made to organizations which are registered Federal committees, the payments hardly rise to the level of "financing" those committees as that term is used in the Act. Payments depend entirely on the services provided. Clearly, these payments to local party organizations with registered Federal committees do not establish a presumption of affiliation as that term is used in Section 110.3(b).

2. Payments by local party organizations for insurance coverage.

Your letter also referenced payments made by local party organizations to the State Committee for insurance coverage. The State Committee purchases an annual liability insurance policy. The insurance company has offered to provide coverage to local party organizations as well. To pay for and receive coverage under the same policy, local party organizations, as a matter of convenience, make payments to the State Committee which in turn pays the insurance company. In effect, the State Committee passes the cost of the insurance premium to the participating local party organization to recover the State Committee's expenses for the coverage. This "purchasing pool" arrangement allows CDP and local party organizations to purchase insurance

coverage at a rate that is less than what the organizations would pay for the coverage if they purchased it separately. Participation in the program is voluntary; decisions made about participation are made by the autonomous governing bodies of local party organizations.

We assume that you are not suggesting that the local party organizations which participate in this insurance program and which maintain Federal registered committees are "financing" the State Committee through payments of insurance premiums giving rise to the presumption of affiliation. Such a conclusion is clearly wrong. The amount of money received by the State Committee from these insurance premium payments is miniscule compared to the overall funding of the State Committee, and is passed directly through to the insurer. Money is not retained by the State Committee, which does not realize any true revenue from the transaction. The local party organizations could obtain insurance without running the payments through the State Committee.

3. Disaffiliation with the San Diego County Democratic Party - Federal Account.
In your letter you pointed out that the San Diego County Democratic Party (SDCDP) and CDP amended their Statements of Organization to remove their affiliated status. You asked us to clarify the factors which no longer make these two entities affiliated.

In 2006, CDP assigned a portion of its Federal coordinated party spending authority to SDCDP. SDCDP later received notice from the FEC that it may be required to amend its Statement of Organization to indicate affiliation of CDP and SDCDP as a consequence of the assignment of coordinated party expenditures.

Although Federal law and FEC regulations and advisory opinions provided no authority to clearly establish that the assignment of coordinated party spending authority required affiliation, both the State Committee and SDCDP each amended their Statements of Organization to reflect the affiliated relationship. Given your current request for clarification on this point, we now have doubts whether that was an appropriate course of action.

It was never the intent of the State Committee and SDCDP to become affiliated by virtue of the assignment. Therefore, once the State Committee's coordinated party expenditure assignment to SDCDP expired, we determined that any affiliation that may have been caused by that assignment should be terminated, and we filed appropriate amendments to the Statement of Organization to do so.

4. State Committee's Website and Bylaws.
You point to portions of the State Committee's website and by-laws that refer to CDP chartered organizations and the role of the State Committee in providing "general direction" to County Central Committees in county elections. We infer from your comments that these factors suggest that the State Committee has therefore "established, financed, maintained or controlled" local party organizations giving rise to the presumption of affiliation.

The Democratic State Central Committee is authorized by its by-laws to charter organizations who include the words "Democratic Party" in their name and who directly or indirectly solicit funds under the representation that the funds are being

solicited for the use of the Democratic Party. In short, the State Committee merely authorizes the use of the term "Democratic" by other local organizations which wish to represent to the public they are soliciting funds for use by the Democratic Party. Beyond that, the State Committee has no say in establishing, financing, maintaining or controlling those local organizations. In fact, the Democratic State Central Committee is prohibited from engaging in any activities that would directly or indirectly result in it establishing, financing, maintaining, or controlling any chartered organization.(See CDP Bylaws, Article X, Section 2(b).)

In your request for information, you cited the FEC Brown Advisory Opinion, 1978-9. In that letter, the Commission concluded that the Iowa State Republican Party was not affiliated with 99 county committees that were created by Iowa statutes, in which each county selected its own officers and adopted its own constitution and by-laws, and in which the State Committee did not mandate or have any influence over the expenditures of the county central committee's funds, and any contributions from the county committees to federal candidates were not made in cooperation, consultation or concert with, or at the request or suggestion of the State party.(Brown AO, supra, p.2.)

Like the facts present in the FEC's Brown Advisory Opinion, county central committees are created by California law with general powers over their own affairs. Members of the county central committee are independently elected by Democratic residents of the county in which they live and as specified under the California Elections Code. Although state law indicates that the state central committee provides "general direction" to the county central committees, county central committees raise and spend their own funds and make independent decisions regarding contributions and expenditures.

Similarly, the State Committee is separately provided for by statute and it governs its own decisions regarding contributions and expenditures.

None of the above activities give rise to the presumption of affiliation.

SUMMARY OF LAW AND FACTS

While your letter cites to the presumption of affiliation between state and local party organizations, the mere citation to the presumption is not sufficient to establish it. The Commission must first show that one party organization has "established, financed, maintained or controlled" the other party organization. In our view none of the factors you cited create the presumption in the first instance.

The payments by the State Committee to local party organizations for vendor services related to voter registration do not establish that the State Committee is establishing, financing, maintaining or controlling those local party organizations which are registered with the FEC. Likewise, the payment of insurance premiums by local party organizations to the State Committee does not mean those organizations are establishing, financing, maintaining or controlling the State Committee.

The charter provisions of the State Committee's bylaws and the "general direction" language do not give rise to a presumption that the State Committee

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establishes, finances, maintains or controls local party organizations. In fact, a close examination of the structure of the State Committee and local party organizations clearly demonstrates that they operate such that local party organization contributions "to candidates for Federal office are not made in cooperation, consultation or concert with, or at the request or suggestion of, the State Committee" and the county committees "are created by statute and are not established by the State Committee and each county committee elects its own officers and adopts its own constitution and bylaws and thus is not controlled by the State Committee."(Brown AO, supra,p.3.)

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We trust that this is responsive to your request for more information. Please do not hesitate to contact us if you have any additional questions.

Sincerely,

Katherine Moret
Treasurer

cc: K. Bowler, Executive Director
L. Olson, Legal Counsel