



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 2, 2011

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2011-15

Abdul Karim Hassan, Esq.  
215-28 Hillside Avenue  
Queens Village, New York 11427

Dear Mr. Hassan:

We are responding to your advisory opinion request concerning the application of the Federal Election Campaign Act of 1971, as amended (the “Act”), the Presidential Primary Matching Payment Account Act, as amended, and Commission regulations to your campaign for President of the United States, given your status as a naturalized citizen.

The Commission concludes that the Act does not prohibit Mr. Hassan, a naturalized citizen, from becoming a “candidate” as that term is defined under the Act. However, Mr. Hassan will not be eligible to receive Federal matching funds under the Presidential Primary Matching Payment Account Act. The Commission also concludes that Mr. Hassan will not be in violation of 2 U.S.C. 441h(b) if he solicits and receives contributions. Finally, Mr. Hassan will be required to comply with the Act’s provisions regarding expenditures, contributions, recordkeeping, and reporting.

### ***Background***

The facts presented in this advisory opinion are based on Mr. Hassan’s letter received on July 7, 2011, as supplemented by emails received on July 19 and 20 and August 25, 2011.

Mr. Hassan is a naturalized U.S. citizen who announced his candidacy for President in March 2008 on his website. Subsequently, he made statements related to his candidacy and used his website to communicate to voters. In order to further communicate his message and platform to the public, Mr. Hassan also purchased campaign advertisements through a contract with Google.

Mr. Hassan indicates that he satisfies all of the constitutional requirements for serving as President, except the natural born citizen requirement in Article II, Section 1, Clause 5 of the Constitution.<sup>1</sup>

### ***Questions Presented***

1. *As a naturalized American citizen, will Mr. Hassan be considered a “candidate” or “person” running for President under the Act?*
2. *As a naturalized American citizen, is Mr. Hassan eligible to receive presidential matching funds under the Presidential Primary Matching Payment Account Act?*
3. *As a naturalized American citizen, will Mr. Hassan violate 2 U.S.C. 441h(b) if he solicits and receives contributions for his presidential campaign?*
4. *Is Mr. Hassan required to comply with the Act’s provisions regarding expenditures, contributions, recordkeeping, and reporting?*

### ***Legal Analysis and Conclusions***

1. *As a naturalized American citizen, will Mr. Hassan be considered a “candidate” or “person” running for President under the Act?*

The Act defines “candidate” as “an individual who seeks nomination for election, or election, to Federal office.” 2 U.S.C. 431(2); *see also* 11 CFR 100.3. An individual becomes a candidate when he or she “has received contributions aggregating in excess of \$5000 or has made expenditures aggregating in excess of \$5000.” 2 U.S.C. 431(2); *see also* 11 CFR 100.3.

The Act and the Commission’s regulations do not address a candidate’s citizenship or any other qualifications for office. Indeed, the Act’s definition of “candidate” applies to those who seek nomination for election or election to Federal office rather than those eligible to be nominated or elected to, or to serve in Federal

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<sup>1</sup> The Commission notes that Mr. Hassan filed a complaint in Federal court on March 5, 2008, alleging principally that the “natural born citizen” requirement in Article II, Section 1 of the Constitution has been “trumped” by the Fourteenth Amendment’s prohibition on “any law which shall abridge the privileges or immunities of citizens of the United States” and the Supreme Court’s interpretation of the Fifth Amendment as prohibiting discrimination on the basis of national origin. *See* Memorandum and Order, *Hassan v. United States*, No. 08-CV-0938 (E.D.N.Y., June 15, 2010) (dismissing Mr. Hassan’s claims on the merits); Corrected Summary Order, *Hassan v. United States*, No. 10-2622-cv, 2011 WL 2490948 (2d Cir., Jun. 21, 2011) (affirming the district court’s dismissal and finding that Mr. Hassan lacks standing to pursue his claims). Mr. Hassan currently has pending before the Second Circuit both a Motion for Opinion Instead of Summary Order (filed July 11, 2011), and a Petition for Rehearing with Suggestion for Rehearing *En Banc* (filed June 30, 2011).

office. Thus, the Act's definition of "candidate" does not turn on whether an individual is a natural born citizen or a naturalized citizen, so long as that person meets the other criteria that define a "candidate."<sup>2</sup>

Mr. Hassan states that he seeks election to Federal office. Mr. Hassan indicates that he has not yet fulfilled the statutory definition of candidate, by either receiving more than \$5000 in contributions or making more than \$5000 in expenditures, and therefore he is not a candidate at this time. If he either raises more than \$5000 in contributions or makes more than \$5000 in expenditures, he will satisfy the definition and will become a candidate under the Act. Mr. Hassan states he is not eligible to be seated for the Office of President because he is a naturalized citizen. The Act, however, does not prevent him from holding himself out as a candidate because the statutory definition does not turn on a person's eligibility to be seated for the office he or she seeks.<sup>3</sup>

The Act defines "person" to include "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government." 2 U.S.C. 431(11); *see also* 11 CFR 100.10. Like the definition of "candidate," the definition of "person" makes no reference to natural born or naturalized citizens. Thus, as an individual, Mr. Hassan is a "person" under the Act.<sup>4</sup>

2. *As a naturalized American citizen, is Mr. Hassan eligible to receive presidential matching funds under the Presidential Primary Matching Payment Account Act?*

No, as a naturalized American citizen, Mr. Hassan is not eligible to receive presidential matching funds under the Presidential Primary Matching Payment Account Act ("Matching Payment Act").

The United States Constitution provides that "[n]o Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President . . . ." U.S. Const. art. II, sec. 1, cl. 5.

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<sup>2</sup> The Act does not contain separate definitions for candidates for different Federal offices. The Constitution's "natural born Citizen" provision only pertains to "the Office of President." U.S. Const., art. II, sec. 1, cl. 5.

<sup>3</sup> Mr. Hassan's status as a "candidate" under the Act does not in any way affect whether Mr. Hassan will be eligible to appear on State ballots or to be a candidate under various State laws. In fact, it is the Commission's understanding that some State ballot access laws provide that a person cannot appear on the ballot or be considered a candidate unless the person will be qualified for the office he or she purports to seek.

<sup>4</sup> Mr. Hassan also asks whether he qualifies as an "individual" under the Act. Neither the Act nor the Commission's regulations define "individual." The term "individual" is used throughout the text of the Act, without any reference to either natural born or naturalized citizens. Mr. Hassan is an individual under the common usage of the term.

Although the Matching Payment Act does not specifically address the citizenship requirement for serving as President, it sets forth the eligibility requirements to receive matching funds. *See* 26 U.S.C. 9033; 11 CFR 9033.2. *See also*, e.g., Advisory Opinion 1996-07 (Browne for President) (describing the steps a candidate must take to become eligible for matching funds). These provisions collectively reflect Congressional intent to ensure that U.S. Treasury funds in the form of matching funds are only paid to eligible candidates.<sup>5</sup>

The Commission is charged under the Matching Payment Act with administering the Federal matching funds program and has some discretion when certifying eligibility for matching funds. While the Commission may not “appraise candidates' good faith, honesty, probity or general reliability when reviewing the agreements and other forward-looking commitments required” by the Matching Payment Act, *see LaRouche v. FEC*, 996 F.2d 1263, 1269 (D.C. Cir. 1993), situations may exist in which, “without assessment of subjective candidate intent, the Commission might conceivably withhold funds despite formal compliance with the statutorily expressed criteria.” *Id.* Clear and self-avowed constitutional ineligibility for office is one of the few instances where the Commission’s exercise of its discretion to withhold funds is appropriate.

Because Mr. Hassan has clearly stated that he is a naturalized citizen of the United States, and not a natural born citizen under the constitutional requirement in Article II, Section 1, Clause 5, the Commission concludes that Mr. Hassan is not eligible to receive matching funds.

3. *As a naturalized American citizen, will Mr. Hassan violate 2 U.S.C. 441h(b) if he solicits and receives contributions for his presidential campaign?*

No, Mr. Hassan will not violate 2 U.S.C. 441h(b) if he solicits and receives contributions for his presidential campaign because the Act’s definition of “candidate” does not turn on his citizenship status.

Section 441h(b) states that “no person shall . . . fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations.” 2 U.S.C. 441h(b)(1); *see also* 11 CFR 110.16(b). Additionally, “no person shall . . . willfully and knowingly participate in or conspire to participate in any plan, scheme, or design” to partake in such fraudulent misrepresentation. 2 U.S.C. 441h(b)(2); *see also* 11 CFR 110.16(b).

Senator Bill Nelson of Florida introduced the amendment that led to this provision in the debate over the Bipartisan Campaign Reform Act of 2002. Senator Nelson stated that the need for such a provision arose from the Commission “receiving a number of complaints that people have fraudulently raised donations by posing as political

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<sup>5</sup> *See* S. Rep. 93-689, at 7 (1974).

committees or candidates.” 147 Cong. Rec. S3122 (daily ed. Mar. 29, 2001) (statement of Sen. Bill Nelson). He described the types of situations the amendment aimed to prevent, including “phony fundraising letters” sent from supposed lawyers for presidential candidates that “urged \$1,000 contributions to seemingly prestigious Pennsylvania Avenue addresses.” *Id.*

Although Mr. Hassan is a naturalized citizen running for President, he would not be engaging in fraudulent misrepresentation as described in section 441h(b) by soliciting or receiving contributions for his presidential campaign committee because nothing in the Act requires a candidate to be eligible for the office he or she seeks. Mr. Hassan represents that he does not intend to falsely represent or solicit funds for a campaign that is not his own, as was contemplated by Congress when it enacted this provision. Thus, the restriction contained in 2 U.S.C. 441h(b) is not applicable to Mr. Hassan’s proposed activity and Mr. Hassan therefore would not be in violation of section 441h(b) when soliciting and receiving contributions for his presidential campaign committee.

Notwithstanding this conclusion, the Commission expresses no opinion on Mr. Hassan’s potential liability arising out of his proposed activities under any other Federal or State law, including any laws concerning fraudulent misrepresentation. Any such issues are outside the Commission’s jurisdiction.

4. *Is Mr. Hassan required to comply with the Act’s provisions regarding expenditures, contributions, recordkeeping, and reporting?*

Yes, Mr. Hassan must comply with the Act’s provisions regarding expenditures, contributions, recordkeeping, and reporting.

Once an individual seeking election to Federal office has either made more than \$5000 in expenditures or received more than \$5000 in contributions, that individual becomes a candidate for the purposes of the Act. 2 U.S.C. 431(2); 11 CFR 100.3. Candidates must comply with several requirements under the Act.

No later than 15 days after becoming a candidate, an individual must file a Statement of Candidacy with the Commission in which he or she designates a principal campaign committee with a treasurer who will accept contributions and make expenditures. *See* 2 U.S.C. 432(e); 11 CFR 101.1. Within 10 days of being designated as a candidate’s principal campaign committee, the campaign committee must file a Statement of Organization. The committee must also file a report detailing the contributions received and the expenditures made before the individual became a candidate. Specifically, these reporting requirements mandate that the treasurer “shall keep records of the name of each contributor, the date of receipt and amount of all contributions received, and all expenditures made in connection with . . . the individual’s campaign prior to becoming a candidate.” 11 CFR 101.3; *see also* 2 U.S.C. 432(e)(2). Following this initial report, the committee must continue to file quarterly reports of contributions and expenditures. 2 U.S.C. 434(a)(2); 11 CFR 104.5. These reports must

detail the total amounts of receipts and disbursements for the reporting period and for the calendar year. *See* 2 U.S.C. 434; 11 CFR 104.3. The principal campaign committee must also comply with recordkeeping requirements related to contributions it receives and expenditures it makes. 11 CFR 102.9. All records required to be kept pursuant to these provisions must be retained for three years. *Id.*

Candidates must also comply with the Act's contribution limits (*see* 2 U.S.C. 441a(a); *see also* 11 CFR 110.1, 110.2, and 110.5) and source prohibitions (*see* 2 U.S.C. 441b, 441c, 441e, 441f, and 441k; *see also* 11 CFR 110.4, 110.20, 114.2, and 115.2).

Once Mr. Hassan has received more than \$5000 in contributions or made more than \$5000 in expenditures for his campaign, he will become a candidate under the Act. As a candidate, Mr. Hassan will be subject to the statutes and regulations applicable to all candidates. Upon obtaining candidate status, he therefore will need to take the steps outlined above to register his principal campaign committee with the Commission and comply with the provisions of the Act regarding expenditures, contributions, recordkeeping, and reporting. In order to comply with these requirements, prior to becoming a candidate, in the testing-the-waters phase, Mr. Hassan will need to maintain records of all funds received and payments made in connection with his campaign, and he will need to comply with all contribution limitations and source prohibitions set forth in the Act and Commission regulations.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. The cited advisory opinion is available on the Commission's website, [www.fec.gov](http://www.fec.gov), or directly from the Commission's Advisory Opinion searchable database at <http://www.fec.gov/searchao>.

On behalf of the Commission,

(signed)  
Cynthia L. Bauerly  
Chair