

Supplement to AOR 2011-15



Joanna
Waldstreicher/FEC/US
07/18/2011 05:56 PM

To: abdul@abdulhassan.com
cc: Stephanie Trifone/FEC/US@FEC, Robert
Knop/FEC/US@FEC, Eugene Lynch/FEC/US@FEC
bcc:

Subject: Advisory Opinion Request

Dear Mr. Hassan:

As we discussed on the phone this afternoon, I am writing to confirm that my understanding of our telephone conversations last week and today is correct. Please reply at your earliest convenience to confirm that the following summary of our conversations is accurate.

First, on Wednesday, July 13, we spoke about question 3 in your request. I asked you to clarify how you thought 2 U.S.C. 441h(b) might be applicable to your circumstances. You stated that your concern was that in soliciting campaign contributions, you could possibly be misrepresenting yourself as a candidate, if a potential contributor did not know that you are not a natural-born citizen and therefore do not meet the constitutional requirements for President.

Second, you confirmed that you understand that although the Commission can respond to the questions asked in your advisory opinion, the Commission cannot make any determination as to whether you can, as a naturalized citizen, serve as President.

Finally, this afternoon, we spoke about question 4 in your request. I asked whether you intended to refer to any specific statute or regulation in asking about "expenditure . . . requirements," or intended to refer more generally to the statutory and regulatory obligations and limitations imposed on candidates. You stated that your question asks two things: (a) whether you are subject to all of the requirements imposed on candidates and those testing the waters, based on the activities you have engaged in so far, and (b) whether that answer is affected by the fact that you are a naturalized citizen. You also said that by referring to "expenditure . . . requirements" you want to know specifically about what campaign expenses are counted toward the \$5,000 threshold for candidate status and reporting requirements, and whether you should be keeping records of campaign expenses made so far (which you stated that you are doing).

Please confirm by reply email that my understanding of our conversations is correct. Thank you.

Joanna Waldstreicher
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Federal Election Commission
999 E Street NW
Washington, DC 20463
(202) 694-1585



"Abdul K. Hassan, Esq."
<abdul@abdulhassan.com>

07/19/2011 09:32 PM

Please respond to
abdul@abdulhassan.com

To JWaldstreicher@fec.gov

cc abdul@abdulhassan.com, strifone@fec.gov,
rknop@fec.gov, etynch@fee.gov

bcc

Subject Re: Advisory Opinion Request

History:  This message has been replied to.

Dear Ms. Waldstreicher:

Please see attached.

Yours truly,
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Web: www.abdulhassan.com Reply_AOR_2011_15.pdf

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Via Email

July 19, 2011

Ms. Joanna Waldstreicher, Esq.
Federal Election Commission
Office of General Counsel
999 E Street, N.W.,
Washington, D.C. 20463.

RECEIVED
FEDERAL ELECTION
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2011 JUL 20 AM 10:49
OFFICE OF GENERAL
COUNSEL

Re: Advisory Opinion Request Tracking #: AOR 2011-15
Conversations About Requests

Dear Ms. Waldstreicher:

This is in response to your email dated July 18, 2011. As you requested, I can confirm that your "understanding of our conversations is correct," except that I would like to clarify paragraph three of your email. I would also like to clarify that any mention of FECA in my request and herein includes all laws interpreted and administered by the FEC including the Bipartisan Campaign Reform Act, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act.

By way of clarification, it is my understanding that the FEC can make a determination as to whether I can serve as President only for the purpose of interpreting the FECA in my situation as per the questions in my request but that such a determination is not binding outside of FECA and the FEC. While I understand that the statutorily defined role of the FEC is to interpret and implement FECA and related laws, if in doing so it is necessary to determine whether I can serve as President, the FEC can decide the issue of presidential eligibility and may actually need to do so in order to fulfill its statutory obligations under FECA. In fact, even though state election officials cannot interpret the Constitution beyond the scope of their mandate, it is my understanding that election officials in several states have invoked the natural born provision in the last two presidential elections to deny ballot access to the candidate from the Socialist Workers Party ("SWP") who is not a natural born citizen – in those states that denied ballot access a natural born citizen replaced the SWP's main candidate on the ballot. Relatedly, the U.S. Attorney General earlier this year declared that the Defense of Marriage Act ("DOMA") was unconstitutional for purposes of deciding whether the Justice Department would defend and enforce the DOMA, while recognizing that any wider invalidation of DOMA on constitutional grounds has to come from the courts.

Here, for example, the FEC may conclude that FECA requires me to disclose my ineligibility under the natural born provision – a material fact, before soliciting votes or campaign contributions. Moreover, in carrying out your duty to interpret FECA in my situation, you may invoke the rule enunciated by the Supreme Court that, “interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available,” Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 575 (1982), and conclude that that it would be “absurd” to give lots of taxpayer dollars to someone who cannot become President under the natural born provision – that Congress never intended such a result when it created the matching fund program. Of course, if you determine, for purposes of answering my questions, that the natural born provision has been trumped by the Fifth and/or Fourteenth Amendments, then I can become President and giving me matching funds would not be absurd.

Any different treatment of me under FECA because of my naturalized status would violate the equal protection guarantee of the Fifth Amendment and the Citizenship Clause of the Fourteenth Amendment and this nonconflict between these amendments and the natural born provision would need to be resolved. The FECA (2 USC § 437h) contemplates constitutional conflicts and authorizes the FEC to commence a declaratory judgment action as a way of resolving them. The FEC may therefore choose to commence a declaratory judgment action with me as a party to obtain the necessary resolution to any constitutional conflicts. It is my position that the invidious national origin discrimination in the natural born provision has been trumped by the equal protection guarantee of the Fifth Amendment which prohibits such discrimination and the Citizenship Clause of the Fifth Amendment which placed natural born and naturalized citizens on equal footing. (see www.abdulhassanforpresident.com/second_circuit).

Finally, it does not seem that my understanding of the FEC’s role is relevant or important to the pending advisory opinion request – what matters is the FEC’s understanding of its role because it is the FEC and not me that will be issuing the opinion.

I thank you and the Commission for the work on my request and I look forward to hearing from the Commission soon.

Respectfully submitted,


Abdul Karim Hassan