

PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS

Members of the public may submit written comments on draft advisory opinions.

DRAFTS A and B of ADVISORY OPINION 2011-15 are now available for comment. It was requested by Abdul Karim Hassan and is scheduled to be considered by the Commission at its public meeting on September 1, 2011.

If you wish to comment on DRAFT A or DRAFT B of ADVISORY OPINION 2011-15, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by noon (Eastern Time) on August 31, 2011.
- 4) The Commission will generally not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

REQUESTOR APPEARANCES BEFORE THE COMMISSION

The Commission has implemented a pilot program to allow advisory opinion requestors, or their counsel, to appear before the Commission to answer questions at the open meeting at which the Commission considers the draft advisory opinion. This program took effect on July 7, 2009.

Under the program:

- 1) A requestor has an automatic right to appear before the Commission if any public draft of the advisory opinion is made available to the requestor or requestor's counsel less than one week before the public meeting at which the advisory opinion request will be considered. Under these circumstances, no advance written notice of intent to appear is required. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).**
- 2) A requestor must provide written notice of intent to appear before the Commission if all public drafts of the advisory opinion are made available to requestor or requestor's counsel at least one week before the public meeting at which the Commission will consider the advisory opinion request. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2). The notice of intent to appear must be received by the Office of the Commission Secretary by hand delivery, email (Secretary@fec.gov), or fax ((202) 208-3333), no later than 48 hours before the scheduled public meeting. Requestors are responsible for ensuring that the Office of the Commission Secretary receives timely notice.**
- 3) Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the Commission's technical capabilities.**
- 4) Requestors or their counsel who appear before the Commission may do so only for the limited purpose of addressing questions raised by the Commission at the public meeting. Their appearance does not guarantee that any questions will be asked.**

FOR FURTHER INFORMATION

Press inquiries: Judith Ingram
Press Officer
(202) 694-1220

Commission Secretary: Shawn Woodhead Werth
(202) 694-1040

Comment Submission Procedure: Rosemary C. Smith
Associate General Counsel
(202) 694-1650

Other inquiries:

To obtain copies of documents related to Advisory Opinion 2011-15, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

ADDRESSES

Office of the Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Office of General Counsel
ATTN: Rosemary C. Smith, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463



FEDERAL ELECTION COMMISSION
Washington, DC 20463

RECEIVED
GENERAL COUNSEL
COMMISSION
SECRETARIAT

2011 AUG 26 P 2:48

August 26, 2011

AGENDA ITEM

MEMORANDUM

TO: The Commission

FROM: Christopher Hughey *pch*
Acting General Counsel

Rosemary C. Smith *rcs*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Joanna S. Waldstreicher *JSW by RMK*
Attorney

Subject: Draft AO 2011-15 (Hassan) – Drafts A and B

For Meeting of 9-1-11

SUBMITTED LATE

Attached are two proposed drafts of the subject advisory opinion (Drafts A and B). We have been asked to place these drafts on the Open Meeting agenda for September 1, 2011.

Attachment

2

3 Abdul Karim Hassan, Esq.
4 215-28 Hillside Avenue
5 Queens Village, New York 11427

DRAFT A

6

7 Dear Mr. Hassan:

8

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

13

The Commission concludes that Mr. Hassan may qualify as a "candidate" under
14 the Act. However, Mr. Hassan will not be eligible to receive Federal matching funds
15 under the Presidential Primary Matching Payment Account Act. The Commission also
16 concludes that Mr. Hassan will not be in violation of 2 U.S.C. 441h(b) if he solicits and
17 receives contributions. Finally, Mr. Hassan will be required to comply with the Act's
18 provisions regarding expenditures, contributions, recordkeeping, and reporting.

19

Background

20

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

22

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

1 Mr. Hassan indicates that he satisfies all of the constitutional requirements for
2 serving as President, except the national born citizen requirement in Article II, Section 1,
3 Clause 5 of the Constitution.

4 ***Questions Presented***

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

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

10 3. *As a naturalized American citizen, will Mr. Hassan violate 2 U.S.C.*
11 *441h(b) if he solicits and receives contributions for his presidential campaign?*

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

14 ***Legal Analysis and Conclusions***

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

17 Yes, as a naturalized American citizen, Mr. Hassan may be a “candidate” and
18 “person” as those terms are defined in the Act.

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

1 \$5000 or has made expenditures aggregating in excess of \$5000.” 2 U.S.C. 431(2); *see*
2 *also* 11 CFR 100.3.

3 The Act and the Commission’s regulations do not address a candidate’s status as
4 either a natural born citizen or naturalized citizen. Thus, the Act’s definition of
5 “candidate” applies broadly to all individuals, regardless of whether an individual is a
6 natural born citizen or a naturalized citizen.¹

7 Mr. Hassan has not yet either received more than \$5000 in contributions or made
8 more than \$5000 in expenditures, and therefore is not yet a candidate and has not filed
9 with the Commission as a candidate. Once he either raises more than \$5000 in
10 contributions or makes more than \$5000 in expenditures, he will become a candidate
11 under the Act.²

¹ Although Mr. Hassan may not be eligible under Article II, Section 1 of the U.S. Constitution to assume the office of the presidency because he is not a natural born citizen, it is not for the Commission to decide on this basis that Mr. Hassan may not be a candidate for that office. As one federal court has stated regarding the issue of eligibility for the presidency:

Arguments concerning qualifications or lack thereof can be laid before the voting public before the election and, once the election is over, can be raised as objections as the electoral votes are counted in Congress. The members of the Senate and the House of Representatives are well qualified to adjudicate any objections to ballots for allegedly unqualified candidates. . .

Judicial review – if any -- should occur only after the electoral and congressional processes have run their course.

Robinson v. Bowen, 567 F. Supp. 2d 1144, 1147 (N.D. Cal. 2008) (citing *Texas v. United States*, 523 U.S. 296, 300-02 (1998)).

Thus, if it is inappropriate for a federal court to adjudicate in the first instance a candidate’s eligibility for office, it is similarly inappropriate for an administrative agency to determine in the first instance an individual’s ability to even be considered a candidate for that office.

² The Commission’s conclusion that Mr. Hassan is a “candidate” for purposes of the Act does not necessarily mean that he is a *viable* candidate for purposes of qualifying to receive matching funds under the Presidential Primary Matching Payment Account Act, which is addressed in the answer to Question 2, below.

1 The Act defines “person” to include “an individual, partnership, committee,
2 association, corporation, labor organization, or any other organization or group of
3 persons, but such term does not include the Federal Government or any authority of the
4 Federal Government.” 2 U.S.C. 431(11); *see also* 11 CFR 100.10. Like the definition of
5 “candidate,” the definition of “person” makes no reference to natural born or naturalized
6 citizens. Thus, as an individual, Mr. Hassan qualifies as a “person” under the Act.³

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

10 Yes, as a naturalized American citizen, Mr. Hassan is not eligible to receive
11 presidential matching funds under the Presidential Primary Matching Payment Account
12 Act (“Matching Payment Act”).

13 The United States Constitution provides that “[n]o Person except a natural born
14 Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution,
15 shall be eligible to the Office of President” U.S. Const. art. II, sec. 1, cl. 5.
16 Although the Matching Payment Act does not specifically address the citizenship
17 requirement for serving as President, it places several conditions and limitations on
18 candidates regarding the eligibility for receiving matching funds and contains numerous
19 requirements to receive them. *See* 26 U.S.C. 9033(a); 11 CFR 9033.2(b). *See also, e.g.,*
20 Advisory Opinion 1996-07 (Browne for President) (describing the steps a candidate must

³ 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, as well as a “candidate” and “person” under the Act.

1 take to become eligible for matching funds). Implicit in all of these requirements,
2 conditions, and limitations is the legitimacy of the individual's candidacy; that is to say,
3 that the candidate not be clearly constitutionally ineligible for the office which is sought.

4 Further, unlike in Question 1, in which the Commission lacks the authority to
5 adjudicate on whether individuals have the right to hold themselves out as candidates and
6 to campaign for office notwithstanding questions about their constitutional eligibility to
7 hold such office (see footnote 1, above), the Commission is charged under the Matching
8 Payment Act with administering the Federal matching funds program. Additionally, the
9 Commission has some discretion when certifying eligibility for matching funds. While
10 the Commission may not "appraise candidates' good faith, honesty, probity or general
11 reliability when reviewing the agreements and other forward-looking commitments
12 required" by the Matching Payment Act, *see LaRouche v. FEC*, 996 F.2d 1263, 1269
13 (D.C. Cir. 1993), situations may exist in which, "without assessment of subjective
14 candidate intent, the Commission might conceivably withhold funds despite formal
15 compliance with the statutorily expressed criteria." *Id.* Clear and self-avowed
16 constitutional ineligibility for office is one of the few instances where such discretion is
17 appropriate.

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

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

3 No, Mr. Hassan will not violate 2 U.S.C. 441h(b) if he solicits and receives
4 contributions for his presidential campaign.

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

12 Senator Bill Nelson of Florida introduced the amendment that led to this provision
13 in the debate over the Bipartisan Campaign Reform Act of 2002. Senator Nelson stated
14 that the need for such a provision arose from the Commission “receiving a number of
15 complaints that people have fraudulently raised donations by posing as political
16 committees or candidates.” 147 Cong. Rec. S3122 (daily ed. Mar. 29, 2001) (statement
17 of Sen. Bill Nelson). He described the types of situations the amendment aimed to
18 prevent, including “phony fundraising letters” sent from supposed lawyers for
19 presidential candidates that “urged \$1,000 contributions to seemingly prestigious
20 Pennsylvania Avenue addresses.” *Id.*

21 Although Mr. Hassan is a naturalized citizen running for President, he would not
22 be engaging in fraudulent misrepresentation as described in section 441h(b) by soliciting

1 or receiving contributions for his presidential campaign committee. Mr. Hassan does not
2 intend to falsely represent or solicit funds for a campaign that is not his own, as was
3 contemplated by Congress when it enacted this provision. Thus, Mr. Hassan would not
4 be in violation of section 441h(b) when soliciting and receiving contributions for his
5 presidential campaign committee.

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

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

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

14 No later than 15 days after becoming a candidate, an individual must file a
15 Statement of Candidacy with the Commission in which he or she designates a principal
16 campaign committee with a treasurer who will accept contributions and make
17 expenditures. *See* 2 U.S.C. 432(e); 11 CFR 101.1. Within 10 days of being designated as
18 a candidate's principal campaign committee, the campaign committee must file a
19 Statement of Organization. The committee must also file a report detailing the
20 contributions received and the expenditures made before the individual became a
21 candidate. Specifically, these reporting requirements mandate that the treasurer "shall
22 keep records of the name of each contributor, the date of receipt and amount of all

1 contributions received, and all expenditures made in connection with . . . the individual's
2 campaign prior to becoming a candidate." 11 CFR 101.3; *see also* 2 U.S.C. 432(e)(2).
3 Following this initial report, the committee must continue to file quarterly reports of
4 contributions and expenditures. 2 U.S.C. 434(a)(2); 11 CFR 104.5. These reports must
5 detail the total amounts of receipts and disbursements for the reporting period and for the
6 calendar year. *See* 2 U.S.C. 434; 11 CFR 104.3. The principal campaign committee
7 must also comply with recordkeeping requirements related to contributions it receives
8 and expenditures it makes. 11 CFR 102.9. All records required to be kept pursuant to
9 these provisions must be retained for three years. *Id.*

10 Candidates must also comply with the Act's contribution limits (*see* 2 U.S.C.
11 441a(a); *see also* 11 CFR 110.1, 110.2, and 110.5) and source prohibitions (*see* 2 U.S.C.
12 441b, 441c, 441e, 441f, and 441k; *see also* 11 CFR 110.4, 110.20, 114.2, and 115.2).

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

1 the Act and Commission regulations.

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

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On behalf of the Commission,

Cynthia L. Bauerly
Chair

1 ADVISORY OPINION 2011-15

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

DRAFT B

Dear Mr. Hassan:

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

13 The Commission concludes that Mr. Hassan may qualify as a "candidate" under
14 the Act. Whether Mr. Hassan will be eligible to receive Federal matching funds under
15 the Presidential Primary Matching Payment Account Act is not yet appropriate for the
16 Commission to determine. The Commission also concludes that Mr. Hassan will not be
17 in violation of 2 U.S.C. 441h(b) if he solicits and receives contributions. Finally, Mr.
18 Hassan will be required to comply with the Act's provisions regarding expenditures,
19 contributions, recordkeeping, and reporting.

20 ***Background***

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

23 Mr. Hassan is a naturalized U.S. citizen who announced his candidacy for
24 President in March 2008 on his website. Subsequently, he made statements related to his
25 candidacy and used his website to communicate to voters. In order to further

1 communicate his message and platform to the public, Mr. Hassan also purchased
2 campaign advertisements through a contract with Google.

3 Mr. Hassan indicates that he satisfies all of the constitutional requirements for
4 serving as President, except the national born citizen requirement in Article II, Section 1,
5 Clause 5 of the Constitution.

6 ***Questions Presented***

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

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

12 3. *As a naturalized American citizen, will Mr. Hassan violate 2 U.S.C.*
13 *441h(b) if he solicits and receives contributions for his presidential campaign?*

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

16 ***Legal Analysis and Conclusions***

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

19 As a naturalized American citizen, Mr. Hassan may be a “candidate” and is a
20 “person” as those terms are defined in the Act, and he states that he is running for
21 President.

1 The Act defines “candidate” as “an individual who seeks nomination for election,
2 or election, to Federal office.” 2 U.S.C. 431(2); *see also* 11 CFR 100.3. An individual
3 becomes a candidate when he or she “has received contributions aggregating in excess of
4 \$5000 or has made expenditures aggregating in excess of \$5000.” 2 U.S.C. 431(2); *see*
5 *also* 11 CFR 100.3.

6 The Act and the Commission’s regulations do not address a candidate’s
7 citizenship or any other qualifications for office. Indeed, the Act’s definition of
8 “candidate” applies to those who seek nomination for election or election to Federal
9 office rather than those eligible to be nominated or elected to, or to serve in Federal
10 office. Thus, the Act’s definition of “candidate” is equally applicable to an individual
11 who is a natural born citizen and to one who is a naturalized citizen, so long as that
12 person meets the other criteria that define a “candidate.”¹

13 Mr. Hassan states that he seeks election to Federal office. Mr. Hassan has not yet
14 fulfilled the statutory definition of candidate, by either receiving more than \$5000 in
15 contributions or making more than \$5000 in expenditures, and therefore he is not a
16 candidate at this time. If he either raises more than \$5000 in contributions or makes more
17 than \$5000 in expenditures, he will satisfy the definition and will become a candidate
18 under the Act. Although Mr. Hassan states he is not eligible to be seated for the office
19 because he is a naturalized citizen, the Act does not preclude him from holding himself
20 out as a candidate as he meets the statutory definition.

21 The Act defines “person” to include “an individual, partnership, committee,

¹ 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.

1 association, corporation, labor organization, or any other organization or group of
2 persons, but such term does not include the Federal Government or any authority of the
3 Federal Government.” 2 U.S.C. 431(11); *see also* 11 CFR 100.10. Like the definition of
4 “candidate,” the definition of “person” makes no reference to natural born or naturalized
5 citizens. Thus, as an individual, Mr. Hassan qualifies as a “person” under the Act.²

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

9 The Commission concludes that this question is speculative, because it depends
10 on a number of contingencies that may or may not occur. The Matching Payment Act
11 and its implementing regulations set forth a series of qualifications and procedural
12 requirements that a candidate must satisfy in order to receive public matching funds. *See*
13 2 U.S.C. 9033; 11 CFR 9033.1 and 9033.2. The Commission’s procedures for certifying
14 candidates to receive matching funds contemplate a process whereby the Commission
15 will evaluate a candidate’s eligibility when the candidate submits the required documents.

16 Therefore this question is, at this time, hypothetical. Commission regulations
17 explain that requests posing hypothetical situations, presenting a general question of
18 interpretation, or regarding the activities of third parties, do not qualify as advisory
19 opinion requests. 11 CFR 112.1(b). On this basis, the Commission expresses no opinion
20 regarding this question. If Mr. Hassan satisfies the other criteria to qualify to receive

² 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.

1 matching funds, he may at that time submit the appropriate materials to seek certification
2 for matching funds.

3 3. *As a naturalized American citizen, will Mr. Hassan violate 2 U.S.C.*
4 *441h(b) if he solicits and receives contributions for his presidential campaign?*

5 No, Mr. Hassan will not violate 2 U.S.C. 441h(b) if he solicits and receives
6 contributions for his presidential campaign.

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

14 Senator Bill Nelson of Florida introduced the amendment that led to this provision
15 in the debate over the Bipartisan Campaign Reform Act of 2002. Senator Nelson stated
16 that the need for such a provision arose from the Commission “receiving a number of
17 complaints that people have fraudulently raised donations by posing as political
18 committees or candidates.” 147 Cong. Rec. S3122 (daily ed. Mar. 29, 2001) (statement
19 of Sen. Bill Nelson). He described the types of situations the amendment aimed to
20 prevent, including “phony fundraising letters” sent from supposed lawyers for
21 presidential candidates that “urged \$1,000 contributions to seemingly prestigious
22 Pennsylvania Avenue addresses.” *Id.*

1 Although Mr. Hassan is a naturalized citizen running for President, he would not
2 be engaging in fraudulent misrepresentation as described in section 441h(b) by soliciting
3 or receiving contributions for his presidential campaign committee. Mr. Hassan does not
4 intend to falsely represent or solicit funds for a campaign that is not his own, as was
5 contemplated by Congress when it enacted this provision. Thus, Mr. Hassan would not
6 be in violation of section 441h(b) when soliciting and receiving contributions for his
7 presidential campaign committee.

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

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

12 Once an individual seeking election to Federal office has either made more than
13 \$5000 in expenditures or received more than \$5000 in contributions, that individual
14 becomes a candidate for the purposes of the Act. 2 U.S.C. 431(2); 11 CFR 100.3.
15 Candidates must comply with several requirements under the Act.

16 No later than 15 days after becoming a candidate, an individual must file a
17 Statement of Candidacy with the Commission in which he or she designates a principal
18 campaign committee with a treasurer who will accept contributions and make
19 expenditures. See 2 U.S.C. 432(e); 11 CFR 101.1. Within 10 days of being designated as
20 a candidate's principal campaign committee, the campaign committee must file a
21 Statement of Organization. The committee must also file a report detailing the
22 contributions received and the expenditures made before the individual became a

1 candidate. Specifically, these reporting requirements mandate that the treasurer “shall
2 keep records of the name of each contributor, the date of receipt and amount of all
3 contributions received, and all expenditures made in connection with . . . the individual’s
4 campaign prior to becoming a candidate.” 11 CFR 101.3; *see also* 2 U.S.C. 432(e)(2).
5 Following this initial report, the committee must continue to file quarterly reports of
6 contributions and expenditures. 2 U.S.C. 434(a)(2); 11 CFR 104.5. These reports must
7 detail the total amounts of receipts and disbursements for the reporting period and for the
8 calendar year. *See* 2 U.S.C. 434; 11 CFR 104.3. The principal campaign committee
9 must also comply with recordkeeping requirements related to contributions it receives
10 and expenditures it makes. 11 CFR 102.9. All records required to be kept pursuant to
11 these provisions must be retained for three years. *Id.*

12 Candidates must also comply with the Act’s contribution limits (*see* 2 U.S.C.
13 441a(a); *see also* 11 CFR 110.1, 110.2, and 110.5) and source prohibitions (*see* 2 U.S.C.
14 441b, 441c, 441e, 441f, and 441k; *see also* 11 CFR 110.4, 110.20, 114.2, and 115.2).

15 Once Mr. Hassan has received more than \$5000 in contributions or made more
16 than \$5000 in expenditures for his campaign, he will become a candidate under the Act.
17 As a candidate, Mr. Hassan will be subject to the statutes and regulations applicable to all
18 candidates. Upon obtaining candidate status, he therefore will need to take the steps
19 outlined above to register his principal campaign committee with the Commission and
20 comply with the provisions of the Act regarding expenditures, contributions,
21 recordkeeping, and reporting. In order to comply with these requirements, prior to
22 becoming a candidate, in the testing-the-waters phase, Mr. Hassan will need to maintain

1 records of all funds received and payments made in connection with his campaign, and he
2 will need to comply with all contribution limitations and source prohibitions set forth in
3 the Act and Commission regulations.

4 This response constitutes an advisory opinion concerning the application of the
5 Act and Commission regulations to the specific transaction or activity set forth in your
6 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
7 of the facts or assumptions presented, and such facts or assumptions are material to a
8 conclusion presented in this advisory opinion, then the requestor may not rely on that
9 conclusion as support for its proposed activity. Any person involved in any specific
10 transaction or activity which is indistinguishable in all its material aspects from the
11 transaction or activity with respect to which this advisory opinion is rendered may rely on
12 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or
13 conclusions in this advisory opinion may be affected by subsequent developments in the
14 law including, but not limited to, statutes, regulations, advisory opinions, and case law.

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On behalf of the Commission,

Cynthia L. Bauerly
Chair