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ADR 2013-07

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July 3, 2013

General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20563

Advisory Opinion Request (Winslow 2)

My name is Dan Winslow and I was the requestor in Advisory Opinion 2013-02 and a candidate in the April 30, 2013, Republican primary for the special election for United States Senate from the State of Massachusetts.

In my Advisory Opinion Request, I asked whether my campaign could apply 11 C.F.R. 110.1 to joint contributions it received from lawfully married same-sex couples.

The Commission answered in the negative stating that so long as the relevant provisions of DOMA remained in effect, my campaign committee could not apply 11 C.F.R. 11.1(i) to these contributions. The Commission's Opinion did state, however, that if "DOMA is held to be unconstitutional by the Supreme Court – or is otherwise modified or repealed – the Commission will, upon request, revisit the issue." Advisory Opinion 2013-02 (Winslow) at page 3.

On June 26, 2013, the Supreme Court of the United States held Section 3 of DOMA unconstitutional in *United States v. Windsor*. Accordingly, this requestor is returning to the Commission to have its decision in Advisory Opinion 2013-02 vacated and a new opinion reached allowing my campaign to receive and deposit joint contributions according to 11 C.F.R. 110.1(i).

Question Presented.

In light of the Supreme Court's decision in *Windsor*, is Advisory Opinion 2013-02 (Winslow 1) issued to my campaign vacated and may my committee now apply 11 C.F.R. 11.1(i) to joint contributions made by lawfully married same-sex couples?

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Additional Facts.

All of the facts presented in my original Advisory Opinion Request remain valid and applicable with two additions: Although I lost the Republican primary for the special election, my campaign still has outstanding debts for which I am actively raising debt retirement contributions, and second: the campaign did not deposit the contribution it received from Messrs. Gershonowitz and Johnson (see Advisory Opinion Request 2013-02, footnote 1). If allowed, that same-sex couple would have their joint contribution put toward my debt retirement efforts.

Discussion.

Requestor understands the Commission was compelled to reach the conclusion it did in Advisory Opinion 2013-02 because of the state of the law at the time. The Commission specifically noted that it would revisit the decision it issued to my campaign if DOMA was held to be unconstitutional. During my campaign and while DOMA was in effect, my Committee was not able to deposit certain joint contributions that may now, in my opinion, be lawfully accepted under 11 C.F.R. 11.1(i). Although my campaign was deprived of some resources, it is now in a position to recoup some of those donations if the Commission issues a new opinion to my campaign.

It is also important, in my opinion, that the Commission's records reflect that Advisory Opinion 2013-02 has been superseded or vacated by a subsequent opinion issued to the same requestor. My committee is specifically bound to the answer it received, but now that the prevailing law has changed, a new opinion should be issued.¹

Conclusion.

First, I would like to thank the Commission for its prompt and professional decision-making in this case. Second, I believe the Commission should issue a new opinion in the easiest way possible for it to re-answer the question presented in my original request; and then hopefully use that opinion as fresh precedent to answer what I am certain will be many more questions to come.

Sincerely yours,



Dan Winslow
Winslow for US Senate Committee
PO Box 1035
Wrentham MA 02035

cc: Craig Engle, Arent Fox
Gregory T. Angelo, Log Cabin Republicans

¹ We have no opinion as to how the Commission should vacate, overrule or reconsider its prior opinion, and we are flexible in accommodating the Commission with any procedures it may need to adopt to reach a new result. We are also not asking any new question, or raising any issues that were not already included in our initial request.



RE: FEC follow up on the Winslow 2 Advisory Opinion Request
Winslow, Daniel B. to: Engle, Craig, jselinkoff@fec.gov

07/08/2013 10:23 AM

History:

This message has been forwarded.

Confirmed. Many thanks.

OFFICE OF GENERAL COUNSEL
2013 JUL -8 AM 11:12
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Duane Morris
www.duanemorris.com
Daniel B. Winslow
Of Counsel

Duane Morris LLP
100 High Street, Suite 2400
Boston, MA 02110-1724

E-MAIL | BIO | VCARD

P: +1 857 488 4268
F: +1 857 401 3062

From: Engle, Craig [mailto:Craig.Engle@arentfox.com]
Sent: Monday, July 08, 2013 10:22 AM
To: jselinkoff@fec.gov; Winslow, Daniel B.
Subject: FEC follow up on the Winslow 2 Advisory Opinion Request

This is to confirm that the contribution is returned to the donor, and was not deposited pending the Commission's Opinion in Winslow 1, and is returned to the donor because of the Advisory Opinion the FEC rendered in

Winslow 1.

Dan - please confirm that I am your attorney in this matter and may speak to the FEC on your behalf.

Thank you both

Craig Engle
Partner

Arent Fox LLP | Attorneys at Law
1717 K Street, NW
Washington, DC 20036-5342
202.775.5791 DIRECT | 202.857.6395 FAX
craig.Engle@arentfox.com | www.arentfox.com

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