UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

Abdul Karim Hassan, Petitioner, -v- Federal Election Commission, Respondent.	**FEC Index #: 11-1354** **Reply and Response**

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE/OPPOSITION TO PETITIONER'S MOTION TO CERTIFY AND/OR EXPEDITE AND IN RESPONSE/OPPOSITION TO RESPONDENT'S MOTION TO DISMISS FOR LACK OF JURISDICTION

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I. PRELIMINARY STATEMENT

Petitioner Abdul Karim Hassan makes the instant submission in reply to respondent's response/opposition to petitioner's motion to certify and/or expedite and in response/opposition to respondent's motion to dismissal for lack of jurisdiction.

II. ARGUMENT

1. THIS COURT HAS JURISDICTION OVER THIS ACTION PURSUANT TO 26 USC § 9041

Defendant argues that this Court lacks jurisdiction because the subject FEC advisory opinion was not an action under the Presidential Primary Matching Payment Account Act ("Matching Payment Act" or "MPA") as required by 26 USC § 9041(a), but instead, was an action under 2 USC § 437f. (Resp. Mot., 5-8). This argument quickly fails on each of several grounds.

First, 2 USC § 437f is merely an authorizing provision which authorizes or empowers the FEC to act under the MPA in the form of issuing advisory opinions. As such, when the FEC denied petitioner the opportunity or right to receive matching funds because of his national origin, it clearly explained that it was doing so under provisions of the MPA and it specifically noted that "These [MPA] provisions collectively reflect Congressional intent" to prohibit foreign-born candidates from receiving matching funds. Simply put, 2 USC § 437f authorizes the FEC to act under

the MPA and when those actions are taken, 26 USC § 9041(a) then authorizes this Court of Appeals to review them. The whole purpose of 26 USC § 9041(a) was to have the Court of Appeals review actions concerning the subject matter of the MPA. Not surprisingly, respondent has cited no case which holds that an action to review an FEC action in applying the MPA but which is authorized by 2 USC § 437f , should be brought in the district court and not in the Court of Appeals pursuant to 26 USC § 9041(a). We can rest assured that if petitioner had sought review in the district court, defendant would swiftly seek dismissal by arguing that 26 USC § 9041(a) required the petition for review to be filed in this Court of Appeals and not in the district court.

Second, the relevant portions of 2 USC § 437f dealing with the MPA are very much part of the MPA. Using the respondent's logic, a party facing enforcement action under MPA would not be able to invoke the defense in 2 USC § 437f because as the respondent argues, the parts of 2 USC § 437f dealing with the MPA are not part of the MPA. It is not illogical for Congress to modify or amend several statutes through a single provision in one statute. This is especially true where the statutes in question are all related and are administered by the same agency.

Third, the FEC has the implied power to issue opinions and rulings under the MPA with or without 2 U.S.C. § 437f. In this regard, we should note respondent's statement that, "In the absence of 2 U.S.C. § 437f, the Commission would have no ***express*** authority to render advisory opinions concerning the application of the

Matching Payment Act." (Resp. Mot., pg 6). Respondent was careful to say "no express authority" instead of "no authority," because even the FEC would agree that it has the implied power to act under the MPA in the form of issuing opinions like the one in this case with or without the express authority in 2 U.S.C. § 437f.

Fourth, because the main purpose of review is to correct actions that are unauthorized or contrary to law, it has to be that review in this Court of Appeals pursuant to 26 USC § 9041(a) is permitted even if the FEC did not have authority for the action under review - so it is immaterial whether authorization for the opinion also came from 2 U.S.C. § 437f.

Next, respondent focuses on "fact development" and states in relevant parts as follows (Resp. Mot., pg 8):

> In [eligibility and repayment matters under MPA] matters, the Commission acts in a quasi-judicial role to find facts and apply the law; those determinations can be efficiently reviewed by this Circuit for possible legal error without any additional fact development.

This argument about the need for additional fact development can be quickly set aside. At the outset, respondent does not identify any alleged facts which need further development. The reason for this is simple – there is no need for additional fact development in this case - the FEC unanimously concluded that it had all the facts needed to make its matching fund ruling. The only material fact in this action is that petitioner is a naturalized citizen and it is impossible for petitioner's foreign born

status to change. The issues in this action are purely legal in nature and there is no need for additional fact development. Respondent also argues on policy grounds and states as follows (Resp. Mot., pg 9):

> If advisory opinions applying FECA were reviewed in the first instance by the district courts but opinions applying the Matching Payment Act were reviewed in the first instance by this Court, a single advisory opinion could become subject to piecemeal and simultaneous judicial review at both the district and appellate levels. In the interest of judicial economy and efficiency, this Court should reject any interpretation of FECA and the Matching Payment Act that would create such an illogical and senseless result.

What this Court should really "reject," is respondent's interpretation of the Constitution which produces invidious discrimination against more than fifteen (15) million naturalized American citizens because that would really indeed create, "an illogical and senseless result." However, Defendant is its own worst enemy when it comes to this "piecemeal" argument because Defendant has pursued this very "illogical and senseless result" in other cases. In Bluman v. FEC, Docket #: 2010-cv-01766 (D.C. District Court), for example, Defendant, contrary to the principles of "judicial economy and efficiency," argued that instead of all of the issues being heard by the district court, the case should be split in two with some issues sent to this Court sitting en banc with the remaining issues to be heard by a three-judge district court. Defendant explained that its opposition to "judicial economy and efficiency" in Bluman was dictated by law which required BCRA issues to go to the district court and FECA issues to go to the Court of Appeals. Likewise, in the instant case, the law

in the form of 26 USC § 9041(a) requires plaintiff to file his challenge of the matching fund ruling in this Court. Moreover, Defendant's concern about multiple proceedings is an illusion because there is no other proceeding challenging the answers in the advisory opinion concerning FECA. In addition, if Defendant is truly concerned about multiple proceedings it should support bringing the challenge in this court as required by law because if this action was commenced in the district court, and then appealed to this court we would have two proceedings instead of the one we now have. Defendant's argument here fails from every conceivable angle. Importantly however, the analysis can begin and end with the statute at 26 USC § 9041(a) which clearly requires that the petition for review be filed in this Court.

2. THIS IS THAT RARE AND EXTRAORDINARY CASE IN WHICH CERTIFICATION IS APPROPRIATE

On the issue of certification, Defendant argues in essence that the statute at 28 USC § 1254 is dead and that its official repeal would be an "obituary" and a mere formality. (Resp. Mot., 10-11). Ironically, this is sort of what petitioner is saying about the natural born provision. Respondent argues that only a rare and extraordinary case would satisfy the requirements of 28 USC § 1254. Respondent also cites the dissent in U.S. v. Seale, 130 S.Ct. 12, 13 (2009), for the proposition that the mere certification of a question is a newsworthy event. In that same dissent however, Justices Stevens and Scalia stated that, "Section 1254(2) and this Court's Rule 19 remain part of our law because the certification process serves a valuable, if

limited, function. We ought to avail ourselves of it in an appropriate case." This case by petitioner Hassan is that rare, extraordinary and appropriate case.

Respondent also cites NLRB v. White Swan Co., 313 U.S. 23, 27 (1941), and argues that the questions should not be certified because they have "have an 'objectionable generality.'" (Resp. Mot., 11-12). Respondent's argument is without merit. In White Swan, the Supreme Court dismissed the certification because it was accompanied by a large set of complicated and confusing facts that had to be sorted through. Here, by contrast, the questions of whether the natural born provision is trumped by the Fifth and Fourteenth Amendments are simple, precise and purely legal in nature and are ideally suited for certification. Respondent next focuses on the agency origins of the case and states in relevant part as follows:

> Most relevant here, in *Civil Aeronautics Bd. v. Am. Air Transp., Inc.*, 344 U.S. 45 (1952), the Supreme Court emphasized that it "does not normally review orders of administrative agencies in the first instance; and the Court does not desire to take any action at this time which might foreclose the possibility of such review in the Court of Appeals." Indeed, as a leading treatise has suggested, "[t]here is room for doubt as to whether original cases in the courts of appeals (such as applications for mandamus, or cases coming directly from administrative agencies) can be transferred to the Supreme Court." Gressman, Supreme Court Practice § 9.3 at 602 (9th ed. 2007).

It should be noted that the Supreme Court did not say that it never reviews actions with agency origins through the certification procedure – it merely says that it does not "normally" do so – confirming that a rare and extraordinary case like this

one would be appropriate for review through the certification procedure. There are two other important differences to note. First, in Civil Aeronautics, certification was sought because of a split in the Court of Appeals and not because the merit issue itself was rare and extraordinary. Here, by contrast, petitioner argues that this case itself is rare and extraordinary. Second, in Civil Aeronautics, the certification was sought by a party to the case directly to the Supreme Court and as the Supreme Court said in the above excerpt, it did not want to deprive the Court of Appeals of the opportunity to rule on the matter en banc to break the tie. Here, by contrast, any certification to the Supreme Court will be made by the Court of Appeals itself.

Significantly, and remarkably, respondent has not opposed or even addressed any of the seven arguments in favor of certification put forth in petitioner's original moving papers. (See Pet. Mot., 8-17). This is because these arguments are extremely meritorious. For example, respondent cannot credibly oppose the view of its own Chairperson that the issues herein are so extraordinary that they should be heard by the "Supreme Court and ultimately not by lower courts," repeat, "not by lower courts" – a view echoed by both Republican and Democrat members of the FEC during their deliberations.

A review of the literature suggests that the main reason for any reluctance by the Court of Appeals in certifying questions and in the Supreme Court accepting such certifications, is that neither Court likes the appearance of the Court of Appeals

dictating matters for the Supreme Court. However, this logic actually justifies certification in this case. Here, one of the main bases for this action is the Supreme Court's view that Dredd Scott was wrongly decided. However, despite its strong views about Dredd Scott, the Supreme Court has never issued an official opinion explaining why it believes Dredd Scott was wrongly decided because since Dredd Scott and until this case, the Supreme Court did not have the opportunity to address invidious citizenship discrimination in the Constitution itself and whether the Constitution's equal protection guarantee trumps such discrimination. It is rare and extraordinary when the Supreme Court describes one of his decisions as a great "self-inflicted wound." South Carolina v. Regan, 465 U.S. 367, 412 (1984). Because only the Supreme Court can correct its mistakes and because such a correction can dispose of this case by explaining the role of discrimination in abrogation analysis, this is that rare and extraordinary case where certification is appropriate.

Respondent also argues against certification by claiming that petitioner's constitutional claims are weak. However, while the extraordinary nature of the issue, and not merit, is the central factor in the certification analysis, the instant case is extremely and compellingly meritorious. At the outset, it may be helpful to clarify the issues and provide a brief summary of equal protection jurisprudence because there seems to be some confusion. First, the equal protection clause of the Fourteenth Amendment applies to the states and the equal protection guarantee of the Fifth

Amendment applies to the federal government – it prohibits the federal government from discriminating. Realizing that discrimination is incompatible and irreconcilable with Constitutional equal protection, beginning in the 1940s, the Supreme Court began to develop a framework for reviewing and determining the validity of discrimination laws. Under this framework, the Supreme Court laid out three levels of review: 1) strict scrutiny which applies to classifications involving race and national origin; 2) intermediate scrutiny which applies to classifications such as gender; and 3) rational basis which applies to classifications such as age. Over the last sixty years, the Supreme Court has applied strict scrutiny to only two discriminatory classifications – race and national origin – national origin discrimination is at issue in this case. As such, race discrimination cases can and also used to analyze national origin discrimination cases. Notably, national origin is subjected to a higher level of review than even gender. Under strict scrutiny review, a law that discriminates on the basis of race or national origin will be upheld only if the government can show that the law is necessary to achieve a compelling governmental interest and that the law is narrowly tailored to achieve that interest. This standard is so tough, no law subject to strict scrutiny review has survived in the Supreme Court in the last sixty years – over this period the Supreme Court has systematically used strict scrutiny review to dismantle and invalidate laws which discriminate on the basis of race or national origin. Federal statute also prohibits the federal government from discriminating on the basis of national origin and arms of the federal government such as the FEC and

the DC Circuit Court of Appeals have all adopted and are enforcing policies which prohibit national origin discrimination.

The last time the federal government supported a law that discriminated on the basis of national origin was during World War II, when Japanese-Americans were sent to internment camps because of their national origin. During the Reagan Administration, Congress passed a law apologizing for that national origin discrimination and paying out millions of compensation to its victims. In light of the preceding history and law, it is therefore extraordinary that the federal government in this case is defending invidious national origin discrimination.

In terms of the issues herein, the Fifth Amendment argument is based on the equal protection guarantee of the Fifth Amendment and the Fourteenth Amendment argument is based on the Citizenship Clause of the Fourteenth Amendment. On the merits, it is readily apparent that respondent here copied in significant part, the merit arguments by Defendant in Hassan v. United States, No. 10-2622, 2011 WL 2490948, at *2 (2nd Cir. June 21, 2011). However, Defendant here does not seem to realize that Defendant in Hassan v. USA has retreated considerably as that case went forth and as the understanding of these issues of first impression got better and better. For example, after plaintiff filed his opposition to the motion to dismiss, Defendant in its reply papers did not put forth any arguments or analysis to rebut Plaintiff's Fifth

Amendment equal protection argument. When Defendant was forced to address the equal protection argument and the Dredd Scott case on appeal, it included the following remarkable disclaimer (See Def. Br. at 21, fn 10):

> In discussing Dred Scott, the United States by no means implies that this case was correctly decided. Nor should defendant's discussion of Dred Scott be construed as tacit agreement with Chief Justice Taney's reasoning therein.

Why does the Defendant in Hassan v. USA, think that its discussion of Dredd Scott may "impl[y] that this case was correctly decided" or may be "construed as tacit agreement with Chief Justice Taney's reasoning therein?" The answer is simple – under the arguments of Defendant in Hassan v. USA and the arguments of respondent in this case, the decision in Dredd Scott would be correct even though the Supreme Court has described that decision as a great self-inflicted wound[1]. South Carolina v. Regan, 465 U.S. 367, 412 (1984). In its opposing brief before the Second Circuit, (pg 21), the Defendant stated in relevant part that:

> Hassan acknowledges that the portions of the Constitution that permitted slavery (upon which the Court relied in Dred Scott)10 were expressly repealed by the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution. Pl. Br. at 19. To the extent Hassan believes that the natural born citizen requirement should be repealed, the proper course would be to petition Congress to amend it and to vote for Senators and Representatives who support amending this provision.

[1] See also http://www.supremecourt.gov/publicinfo/speeches/sp_03-21-03.html - In reference to the Dredd Scott decision, then Chief Justice Rehnquist said in a 2003 that 'It was rightly referred to by a later Chief Justice as a "self-inflicted wound" from which it took the Court at least a generation to recover.'

Defendant in Hassan v. USA and the respondent in this case believe that only a constitutional amendment could have produced a different result in Dredd Scott while the Supreme Court and petitioner herein strongly believe that the result should have been different even before the Thirteenth, Fourteenth and Fifteenth Amendments were adopted. This fundamental disagreement between respondent and the Supreme Court further demonstrates that respondent's decision in this case to choose invidious discrimination over constitutional equal protection is without merit.

While the Supreme Court has never officially explained why it believes Dredd Scott was wrongly decided, it dropped a big hint in the very recent case of McDonald v. City of Chicago, Ill. 130 S.Ct. 3020, 3059 -3060 (U.S., 2010). In discussing the Dredd Scott case, the Supreme Court in McDonald stated that, "slavery, and the measures designed to protect it, were irreconcilable with the principles of equality," in the Constitution even though the slavery provisions in the Constitution were very specific and the equality principles were very general and even though constitutional "equality" was adopted around the same time as the slavery provisions. The "irreconcilable" finding in McDonald is significant because even the government in Hassan v. USA agreed that implicit repeal occurs when two provisions of the constitution are irreconcilable. It seems obvious therefore, that in strongly stating that Dredd Scott was wrongly decided, the Supreme Court is saying that the equality

guarantee of the Fifth Amendment trumped, abrogated and implicitly repealed the slavery provisions and the invidious citizenship discrimination in the Constitution at the time of Dredd Scott. Here, the invidious national origin discrimination in the natural born provision is irreconcilable with the equality guarantee of the Fifth Amendment and is therefore trumped, abrogated and implicitly repealed by it. There is a very easy technique that can be used to determine irreconcilability – assume the natural born provision was a statute and then decide whether it would violate the Fifth Amendment? It obviously would violate the Fifth Amendment under strict scrutiny analysis especially where the Supreme Court has declared that the rationale behind the natural born provision – that foreign born citizens cannot be trusted, is "impermissible" and "impossible for us to make." See Schneider v. Rusk, 377 U.S. 163, 168 (1964). Significantly, parts of the Constitution that were not viewed as irreconcilable over 200 years ago, may be viewed as irreconcilable today because of changes in Constitutional interpretation over this long period – it is only in the last sixty years that the Supreme Court has interpreted the Fifth Amendment as containing an equal protection guarantee and that such guarantee prohibits national origin discrimination.

Contrary to Respondent's assertion, Fitzpatrick v. Bitzer, 427 U.S. 445 (1976) powerfully supports petitioner's position. First, there is nothing "express" in the Fourteenth Amendment that abrogates the Eleventh – the Fourteenth Amendment is

silent as to the Eleventh. As such, the Fourteenth Amendment's abrogation of the Eleventh Amendment is implied and not express. On the point that the Fourteenth Amendment was intended to limit the power of the states, it should be noted that the Fifth Amendment's equal protection guarantee limits the federal government's power to discriminate in exactly the same way the Fourteenth Amendment limits the power of the states to discriminate. Moreover, like the Fourteenth and Fifth Amendments, the Commerce Clause limits the power of the states and Congress has power to enforce it as well. Yet, the commerce clause does not abrogate the Eleventh Amendment but the Fourteenth Amendment does. The reason is obvious – it is no accident that in every Fourteenth Amendment case in which abrogation of the Eleventh Amendment was found, the subject matter was discrimination – there is a presumption in favor of abrogation/implicit repeal when we are dealing with discrimination, especially strict scrutiny discrimination like race or national origin.

Respondent cites to Schneider v. Rusk, 377 U.S. 163 (1964), and several prior cases which noted the different treatment of naturalized citizens in the natural born provision. These cases merely highlight the difference that petitioner also highlights in this action. Unlike here however, the courts in those cases were never asked to resolve or reconcile this difference because presidential eligibility was never at issue in those cases and the Courts in those cases never had the benefit of the arguments made herein and the developments in civil rights jurisprudence since the 1960s –

especially the recent ruling in McDonald that constitutional discrimination is irreconcilable with constitutional equality. Very strangely however, while citing Schneider and prior cases, respondent does not address or even mention Afroyim v. Rusk, 387 U.S. 253 (1967), which is the seminal and most recent in the Schneider line of cases and in which the Supreme Court stated, without exception as to presidential eligibility that, "[The naturalized citizen] becomes a member of the society, possessing all the rights of a native citizen, and standing, in view of the constitution, on the footing of a native"). Afroyim, 387 U.S. at 260. In Afroyim, the Supreme Court deliberately removed that part of the quotation about the natural born provision because it was necessary to do so in order for the Court to hold that the Fourteenth Amendment created a single citizenship that cannot be diluted, shifted or destroyed. In so holding, the Afroyim Court specifically addressed the legislative history of the Fourteenth Amendment and found it to be ambiguous so any attempt by Respondent to overrule the Supreme Court on the significance of legislative history must obviously fail. Significantly however, the fact that Respondent cannot address the seminal and leading case on the Citizenship Clause of the Fourteenth Amendment upon which petitioner relies is compelling proof that petitioner's case is extremely strong.

As a fallback position, Respondent asserts that, "Even if Hassan's questions met the requirements of section 1254(2)", the questions should not be certified

because Hassan has not, "received matching contributions which in the aggregate, exceed $5,000 in contributions from residents of each of at least 20 states." 26 U.S.C. § 9033(b)(3), and as such, standing and ripeness do not exist. (Resp. Mot., 13, fn 4). Respondent was right to hide this argument in a footnote because it is without merit. As part of his docketing statement, petitioner included a lengthy standing/ripeness statement (Ex 1) along with a supporting declaration (Ex. 2) (See Docket #: 1337804) and these are incorporated here. As laid out therein, the Supreme Court in Adarand, stated in relevant part as follows (internal cites omitted):

> The injury in cases of this kind is that a "discriminatory classification prevent[s] the plaintiff from competing on an equal footing." The aggrieved party "need not allege that he would have obtained the benefit but for the barrier in order to establish standing."

Moreover, this Circuit has reiterated well established standing/ripeness jurisprudence in holding that a petitioner need not engage in futile conduct in order to challenge an FEC advisory opinion. See National Conservative Political Action Committee v. Federal Election Commission, 626 F.2d 953 (D.C. Cir. 1980). Respondent made clear in its subject opinion that petitioner will be denied matching funds even if there is "formal compliance with the statutorily expressed criteria," because petitioner is a naturalized citizen. Here, because it is impossible for petitioner to change his foreign-born status upon which the subject FEC ruling is based, any additional efforts or conduct by petitioner to raise money and in trying to get

matching funds would be an elaborate exercise in futility. As such, standing and ripeness clearly exist.

Respondent also mentions the case of Hassan v. USA, on the issue of standing. In Hassan v. USA, the district court correctly applied binding precedent in finding that petitioner had standing to challenge the natural born provision and that the claims were ripe for review. It was so obvious that the petitioner suffered the requisite "injury in fact," the government on appeal did not challenge the district court's ruling that petitioner suffered the "injury in fact." As such, neither party before the Second Circuit addressed "injury in fact" in their briefs and the Second Circuit disagreed with the district court on standing solely based on the alleged absence of "injury in fact." The numerous errors in the Second Circuit's standing decision were due to the fact that unlike the district court, the Second Circuit did not have the benefit of briefing. Instead of denying the unopposed petition for rehearing with a one-word denial as it usual does, likely realizing the merit of the standing/ripeness arguments the Second Circuit felt the need to explain that, "Appellant had ample opportunity to brief all relevant issues, including the issue of standing, before the district court and this Court and an opportunity to further advance his positions at oral argument." Notably, the Second Circuit did not take issue with the compelling merits of the standing arguments - instead, it said the arguments should have been raised earlier. Unlike the Second Circuit, this Court is being presented with the relevant arguments.

Moreover, petitioner has been injured even more since the Second Circuit ruling - when the FEC issued its ruling that petitioner cannot obtain matching funds because of his naturalized citizen status. (See Ex. 1 and 2).

A more detailed treatment of the merit arguments can be found in the Second Circuit briefs at www.abdulhassanforpresident.com/second_circuit.

3. EXPEDITED HANDLING IS WARRANTED IN THIS CASE

As laid out above, plaintiff has a compelling case on the merits and he will suffer irreparable harm because the presidential primary season is due to begin in Iowa in less than two months and will run for only several months after that. As laid out in petitioner's declaration (Ex. 2) he is already suffering harm because in light of the FEC's ruling he has been injured in several different ways and because of the passage of time and the nearness of the Presidential elections, this harm will be irreparable. It is very common for Courts to expedite election cases especially those dealing with constitutional questions – Bush v. Gore, 531 U.S. 98 (2000), is probably the most famous example.

In addition, the fact that Congress in enacting 26 USC § 9041(a) provided for review directly in the Court of Appeals is an indication that Congress intended campaign finance matters like this one, especially those involving constitutional

issues like this one, to be handled on an expedited basis. Relatedly, the FECA at 2 USC § 437h, requires constitutional challenges to FECA to be immediately certified to the Court of Appeals sitting en banc and the Bipartisan Campaign Reform Act ("BCRA") § 403 which amended FECA, provides for direct appeal to the Supreme Court, bypassing the Court of appeals and instructs the Supreme Court "to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal."

This Court's rules also provide for expedited handling in cases, "in which the public generally, or in which persons not before the Court, have an unusual interest in prompt disposition." (See pg 33 of Handbook). This public interest exception applies here as well - the election authorities in all fifty states have an unusual interest in the prompt resolution on the merits. In July 2011, plaintiff requested ballot access rulings from the election authorities in all fifty states in light of the natural born provision and many have already responded[2]. What is clear from the responses is that these authorities are looking for guidance from the courts as to whether the natural born provision has been trumped and some have specifically promised to reconsider their responses if there is a judicial ruling to the contrary and given the nearness of the Presidential elections and the ballot petitioning period, the state authorities who have responded as well as those who are yet o respond, will benefit tremendously from an

[2] See http://www.abdulhassanforpresident.com/ballot_access/rulings.pdf

expedited ruling on the merits. Also, this issue of the natural born provision has dominated the media in recent years and the FEC's ruling at issue in this case has also garnered a lot of public attention and interest and a large part of the American public including people on both sides of the issue, would very much like to see a ruling on the merits – a quick internet search will support this view.

III. CONCLUSION

Based on the foregoing, Petitioner kindly request that this Honorable Court deny respondent's motion to dismiss in its entirety, grant certification to the U.S. Supreme Court, or in the alternative, expedite this appeal, together with such other relief as the Court deems just and proper.

Dated: Queens Village, New York
November 17, 2011

Respectfully submitted,

/s/ Abdul Hassan

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EXHIBIT 1

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

Abdul Karim Hassan, Petitioner, -v- Federal Election Commission, Respondent.	**Docket #: 11-CV-1354** **Standing and Jurisdictional Statement**

I. PRELIMINARY STATEMENT

Petitioner Abdul Karim Hassan ("Hassan" or "petitioner") is a naturalized American citizen and presidential candidate. He submits the instant statement in support of his standing in and this Court's jurisdiction over this action. This submission on standing is somewhat detailed at this early stage in part because there is a pending motion to certify the merit questions herein to the U.S. Supreme Court or in the alternative, to expedite the case. It also seems from the cases and procedures that this Court would like standing to be addressed sooner rather than later in these types of cases.

The relevant facts are laid out in the accompanying declaration of petitioner and the exhibits referenced in this statement are attached to that declaration.

II. LEGAL POINTS

1. Discriminatory Classification and Unequal Footing

On July 5, 2011, petitioner asked the FEC for a ruling, in relevant part, as to whether he would be eligible for matching funds given that he is a naturalized citizen. (Petitioner Declaration, Ex. 2, 3). As recited in the FEC's ruling (Ex. 1, pg 1-2), and transcript (Petitioner's Declaration, Ex. 4) petitioner satisfies all the constitutional requirements for being President except the requirement of natural born status. (Pet. Decl. ¶ 9-12). Solely because of petitioner's naturalized status, the FEC ruled in relevant part that (Ex. 1, pg 4):

> 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.

At the outset, the FEC's ruling on matching funds is the type of agency action that petitioner has standing to challenge and which is ripe for review under this Court's established precedent. See for example, Unity 08 v. FEC, 596 F.3d 861 (D.C. Cir. 2010) (examining, affirming and reiterating petitioner's right to challenge FEC advisory opinion and setting aside said opinion). The existence of standing and ripeness here is even more obvious and compelling than in Unity 08 in light of the arguments and points below.

Given that the FEC ruled against petitioner in the instant case based on a discriminatory classification – national origin, the relevant standing standard is the one reiterated by the Supreme Court in Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 211-212 (1995). In Adarand, the U.S. Supreme Court stated in relevant part as follows (internal cites omitted):

> The injury in cases of this kind is that a "discriminatory classification prevent[s] the plaintiff from competing on an equal footing." The aggrieved party "need not allege that he would have obtained the benefit but for the barrier in order to establish standing."

In Adarand, the plaintiff was disadvantaged in getting the job, but here, petitioner is totally prevented from getting matching funds because of the national origin discrimination in the natural born provision which was the basis of the FEC's ruling. Because of this invidious strict scrutiny discrimination against petition and more than fifteen (15) million other naturalized citizens, petitioner is not only forced to compete for matching funds on an unequal footing with natural born candidates, he is also forced to compete on an unequal footing for the Presidency as well – competing for the Presidency without the availability of matching funds.

2. Futility

This Circuit has reiterated well established standing/ripeness jurisprudence in holding that a petitioner need not engage in futile conduct in order to challenge an FEC advisory opinion. See National Conservative Political Action Committee v. Federal Election Commission, 626 F.2d 953 (D.C. Cir. 1980). Here, because it is impossible for petitioner to change his foreign-born status upon which the subject FEC ruling is based, any additional efforts or conduct by petitioner in trying to get matching funds would be an elaborate exercise in futility. In order words, even if petitioner satisfies the other requirements for matching funds many times over, he still will be denied because he will always be foreign-born. In addition, the FEC had the benefit of the constitutional objections raised herein before it issued the challenged ruling. (Ex. 2, 3). However, that the FEC took the position that it lacked the power to decide the Constitutional question of whether the natural born provision was trumped by the Fifth and Fourteenth Amendment. (See FEC's email in Ex. 3). (Ex 4 – Tr. 23:3-6; 5:21-25; 25:5-9; 6:18-21; 21:5-10).

3. Illegality and Impropriety

As the term "Matching Funds" suggests, the matching funds program requires the raising of funds which are then matched by the government under certain conditions. However, the FEC has expressed the strong view that it is a very bad idea and may be illegal for petitioner to solicit and receive contributions

unless petitioner first obtains a favorable judicial ruling on the merits of his arguments that the natural born provision has been trumped. (See Ex 4 – Tr. 12:10-13; 12:19-25; 13:1-9; 7:1-9; 16:10-13; 19:5-9). The FEC commissioners have also opined that soliciting campaign contributions before a favorable ruling that the natural born provision has been trumped may constitute fraud or deceptive practice under state or other federal laws even though FECA itself does not prohibit a naturalized citizen like petitioner from doing so. (Ex. 1, pg 5). (Ex. 4 – Tr. 12:22-25; 13:1-9). It is well established that a petitioner need not risk enforcement or criminal action in order to have standing to challenge an FEC advisory opinion and this Court has noted that this is most true when constitution rights are at stake as is the case here where petitioner's equal protection rights under the Constitution are at stake. See Unity 08 v. FEC, 596 F.3d 861, 865 (D.C. Cir. 2010). Alaska Dep't of Environmental Conservation v. EPA, 540 U.S. 461, 483 (2004).

4. Reasonableness

The rule of reasonableness is one of the cornerstones of standing jurisprudent. See Amnesty Intern. USA v. Clapper, 638 F.3d 118 (2d Cir. 2011) (a plaintiff may establish a cognizable injury in fact by showing that he has altered or ceased conduct as a reasonable response to the challenged statute."). Similarly, as one of the FEC commissioners noted, in enacting FECA and related laws Congress

assumed that it would not be logical for a naturalized citizen to "go through the bother" to get matching funds and run for President in light of the natural born provision (see Ex. 4 – Tr. 16:1-4) – further powerful support for the argument that a petitioner should logically have standing to challenge the natural born provision before he has to "go through the bother" to get matching funds and run for President. In fact, in enacting FECA, related laws and the regulations thereunder, Congress and the FEC adopted the "testing the waters" provisions and the $5,000 threshold for persons who have moved beyond "testing the waters" phase[1] because they recognized that it would be unreasonable and illogical for presidential hopefuls like petitioner to undertake the financial and other costs of a presidential run or seeking matching funds without identifying and trying to overcome obstacles at an early stage, especially significant obstacles like the natural born provision at issue herein.

Simply put, the Supreme Court has never required a plaintiff to engage in disruptive, illegal, impossible, futile, unreasonable, or illogical conduct in order to achieve standing. Petitioner herein has done a lot more than he is logically and legally expected to do and has exceeded the standing requirements as a result.

[1] See for example 11 CFR § 100.72 and 11 CFR § 100.131. See also the Federal Election Commission bulletin (http://www.fec.gov/pages/brochures/testing_waters.pdf), summarizing the relevant FECA provisions. See also Federal Election Campaign Act ("FECA"), 2 USC § 431 et Seq. also contained at http://www.fec.gov/law/feca/feca.pdf.

5. Broad Standing in Civil Rights Cases

The already strong standing argument is made even stronger by the fact that courts have traditionally applied a "broad and accommodating concept of standing in civil rights cases." La Mar v. H & B Novelty & Loan Co., 489 F.2d 461, 469 (9th Cir. 1973). One of the reasons for this relaxed standard is the fact that invidious discrimination not only injures the petitioner but the whole society as well. As Justice O'Connor reiterated in Adarand v. Pena, 515 U.S. 200, 213 (1995), "[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." Where as here, our government discriminates against petitioner and more than fifteen (15) million of its other naturalized citizens because of their national origin/ancestry – a strict scrutiny characteristic, this Court has no higher duty than to inform petitioner and the millions of other victims of such invidious discrimination across the nation whether they are required to endure such discrimination and why.

No law discriminating on the basis of a strict scrutiny characteristic such as national origin that is at issue herein has survived in the Supreme Court in the last 60 years. Discrimination based on race and national origin are both subject to strict

scrutiny so race and national origin cases can be used interchangeably. See United States v. Virginia, 518 U.S. 515, 532 n. 6 (1996) (noting that "[t]he Court has thus far reserved most stringent judicial scrutiny for classifications based on race or national origin"). See also Jana-Rock Const., Inc. v. New York State Dept. of Economic Development, 438 F.3d 195, 200 (2d Cir. 2006) ("The classifications that are the subject of this appeal are based on national origin rather than race. It is undisputed, however, that principles of analysis applicable to race-based affirmative action programs are the same as those applicable to national-origin-based affirmative action programs. We therefore use the terms interchangeably."

The last time the Supreme Court upheld strict scrutiny discrimination – it was national origin discrimination against Japanese Americans during World War II. See Hirabayashi v. United States, 320 U.S. 81 (1943) and Korematsu v. United States, 323 U.S. 214 (1944). The Congress later passed legislation apologizing for and compensating the victims of those unfortunate decisions. So strong is petitioner's case on the merits that if this Court rules against petitioner on the merits, such a ruling would be the first time since Dred Scott v. Sandford, 60 U.S. 393 (1857), that a federal appellate court upheld invidious citizenship discrimination contained in the Constitution itself. The Supreme Court, with much

regret, has described its decision in Dredd Scott as a great "self-inflicted wound." South Carolina v. Regan, 465 U.S. 367, 412 (1984).

III. CONCLUSION

Based on the foregoing, this Honorable Court should find that petitioner has established standing and that this Court has jurisdiction over this action.

Dated: Queens Village, New York
October 26 2011

Respectfully submitted,

/s/ Abdul Hassan

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EXHIBIT 2

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
Washington, DC 20001-2866
Phone: 202-216-7000 | Facsimile: 202-219-8530

AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

1. CASE NO. 11-1354 2. DATE DOCKETED: 09/29/2011
3. CASE NAME (lead parties only) Abdul Karim Hassan v. Federal Election Commission
4. TYPE OF CASE: ☒ Review ☐ Appeal ☐ Enforcement ☐ Complaint ☐ Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? ○ Yes ◉ No
   If YES, cite statute
6. CASE INFORMATION:
   a. Identify agency whose order is to be reviewed: Federal Election Commission
   b. Give agency docket or order number(s): FEC-AO2011-15
   c. Give date(s) of order(s): 09/02/2011
   d. Has a request for rehearing or reconsideration been filed at the agency? ○ Yes ◉ No
      If so, when was it filled? By whom?
      Has the agency acted? ○ Yes ○ No If so, when?
   e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):
      See attached standing statement and standing declaration with exhibits
   f. Are any other cases involving the same underlying agency order pending in this Court or any other?
      ○ Yes ◉ No If YES, identify case name(s), docket number(s), and court(s)
   g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?
      ◉ Yes ○ No If YES, give case name(s) and number(s) of these cases and identify court/agency:
      Abdul Karim Hassan v. United States, Supreme Court Docket #: 11-507, Cert petition pending
   h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? ○ Yes ◉ No If YES, provide program name and participation dates.

Signature Abdul Hassan Date 10/26/2011

Name of Counsel for Appellant/Petitioner Abdul K. Hassan, Esq., petitioner, pro se
Address 215-28 Hillside Avenue, Queens Village, NY 11427
E-Mail abdul@abdulhassan.com Phone (718) 740-1000 Fax (718) 468-3894

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.

Standing Statement

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

Abdul Karim Hassan, Petitioner, -v- Federal Election Commission, Respondent.	**Docket #: 11-CV-1354** **Standing and Jurisdictional Statement**

I. PRELIMINARY STATEMENT

Petitioner Abdul Karim Hassan ("Hassan" or "petitioner") is a naturalized American citizen and presidential candidate. He submits the instant statement in support of his standing in and this Court's jurisdiction over this action. This submission on standing is somewhat detailed at this early stage in part because there is a pending motion to certify the merit questions herein to the U.S. Supreme Court or in the alternative, to expedite the case. It also seems from the cases and procedures that this Court would like standing to be addressed sooner rather than later in these types of cases.

The relevant facts are laid out in the accompanying declaration of petitioner and the exhibits referenced in this statement are attached to that declaration.

II. LEGAL POINTS

1. Discriminatory Classification and Unequal Footing

On July 5, 2011, petitioner asked the FEC for a ruling, in relevant part, as to whether he would be eligible for matching funds given that he is a naturalized citizen. (Petitioner Declaration, Ex. 2, 3). As recited in the FEC's ruling (Ex. 1, pg 1-2), and transcript (Petitioner's Declaration, Ex. 4) petitioner satisfies all the constitutional requirements for being President except the requirement of natural born status. (Pet. Decl. ¶ 9-12). Solely because of petitioner's naturalized status, the FEC ruled in relevant part that (Ex. 1, pg 4):

> 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.

At the outset, the FEC's ruling on matching funds is the type of agency action that petitioner has standing to challenge and which is ripe for review under this Court's established precedent. See for example, Unity 08 v. FEC, 596 F.3d 861 (D.C. Cir. 2010) (examining, affirming and reiterating petitioner's right to challenge FEC advisory opinion and setting aside said opinion). The existence of standing and ripeness here is even more obvious and compelling than in Unity 08 in light of the arguments and points below.

Given that the FEC ruled against petitioner in the instant case based on a discriminatory classification – national origin, the relevant standing standard is the one reiterated by the Supreme Court in Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 211-212 (1995). In Adarand, the U.S. Supreme Court stated in relevant part as follows (internal cites omitted):

> The injury in cases of this kind is that a "discriminatory classification prevent[s] the plaintiff from competing on an equal footing." The aggrieved party "need not allege that he would have obtained the benefit but for the barrier in order to establish standing."

In Adarand, the plaintiff was disadvantaged in getting the job, but here, petitioner is totally prevented from getting matching funds because of the national origin discrimination in the natural born provision which was the basis of the FEC's ruling. Because of this invidious strict scrutiny discrimination against petition and more than fifteen (15) million other naturalized citizens, petitioner is not only forced to compete for matching funds on an unequal footing with natural born candidates, he is also forced to compete on an unequal footing for the Presidency as well – competing for the Presidency without the availability of matching funds.

2. Futility

This Circuit has reiterated well established standing/ripeness jurisprudence in holding that a petitioner need not engage in futile conduct in order to challenge an FEC advisory opinion. See National Conservative Political Action Committee v. Federal Election Commission, 626 F.2d 953 (D.C. Cir. 1980). Here, because it is impossible for petitioner to change his foreign-born status upon which the subject FEC ruling is based, any additional efforts or conduct by petitioner in trying to get matching funds would be an elaborate exercise in futility. In order words, even if petitioner satisfies the other requirements for matching funds many times over, he still will be denied because he will always be foreign-born. In addition, the FEC had the benefit of the constitutional objections raised herein before it issued the challenged ruling. (Ex. 2, 3). However, that the FEC took the position that it lacked the power to decide the Constitutional question of whether the natural born provision was trumped by the Fifth and Fourteenth Amendment. (See FEC's email in Ex. 3). (Ex 4 – Tr. 23:3-6; 5:21-25; 25:5-9; 6:18-21; 21:5-10).

3. Illegality and Impropriety

As the term "Matching Funds" suggests, the matching funds program requires the raising of funds which are then matched by the government under certain conditions. However, the FEC has expressed the strong view that it is a very bad idea and may be illegal for petitioner to solicit and receive contributions

unless petitioner first obtains a favorable judicial ruling on the merits of his arguments that the natural born provision has been trumped. (See Ex 4 – Tr. 12:10-13; 12:19-25; 13:1-9; 7:1-9; 16:10-13; 19:5-9). The FEC commissioners have also opined that soliciting campaign contributions before a favorable ruling that the natural born provision has been trumped may constitute fraud or deceptive practice under state or other federal laws even though FECA itself does not prohibit a naturalized citizen like petitioner from doing so. (Ex. 1, pg 5). (Ex. 4 – Tr. 12:22-25; 13:1-9). It is well established that a petitioner need not risk enforcement or criminal action in order to have standing to challenge an FEC advisory opinion and this Court has noted that this is most true when constitution rights are at stake as is the case here where petitioner's equal protection rights under the Constitution are at stake. See Unity 08 v. FEC, 596 F.3d 861, 865 (D.C. Cir. 2010). Alaska Dep't of Environmental Conservation v. EPA, 540 U.S. 461, 483 (2004).

4. Reasonableness

The rule of reasonableness is one of the cornerstones of standing jurisprudent. See Amnesty Intern. USA v. Clapper, 638 F.3d 118 (2d Cir. 2011) (a plaintiff may establish a cognizable injury in fact by showing that he has altered or ceased conduct as a reasonable response to the challenged statute."). Similarly, as one of the FEC commissioners noted, in enacting FECA and related laws Congress

assumed that it would not be logical for a naturalized citizen to "go through the bother" to get matching funds and run for President in light of the natural born provision (see Ex. 4 – Tr. 16:1-4) – further powerful support for the argument that a petitioner should logically have standing to challenge the natural born provision before he has to "go through the bother" to get matching funds and run for President. In fact, in enacting FECA, related laws and the regulations thereunder, Congress and the FEC adopted the "testing the waters" provisions and the $5,000 threshold for persons who have moved beyond "testing the waters" phase[1] because they recognized that it would be unreasonable and illogical for presidential hopefuls like petitioner to undertake the financial and other costs of a presidential run or seeking matching funds without identifying and trying to overcome obstacles at an early stage, especially significant obstacles like the natural born provision at issue herein.

Simply put, the Supreme Court has never required a plaintiff to engage in disruptive, illegal, impossible, futile, unreasonable, or illogical conduct in order to achieve standing. Petitioner herein has done a lot more than he is logically and legally expected to do and has exceeded the standing requirements as a result.

[1] See for example 11 CFR § 100.72 and 11 CFR § 100.131. See also the Federal Election Commission bulletin (http://www.fec.gov/pages/brochures/testing_waters.pdf), summarizing the relevant FECA provisions. See also Federal Election Campaign Act ("FECA"), 2 USC § 431 et Seq. also contained at http://www.fec.gov/law/feca/feca.pdf.

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The already strong standing argument is made even stronger by the fact that courts have traditionally applied a "broad and accommodating concept of standing in civil rights cases." La Mar v. H & B Novelty & Loan Co., 489 F.2d 461, 469 (9th Cir. 1973). One of the reasons for this relaxed standard is the fact that invidious discrimination not only injures the petitioner but the whole society as well. As Justice O'Connor reiterated in Adarand v. Pena, 515 U.S. 200, 213 (1995), "[d]istinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." Where as here, our government discriminates against petitioner and more than fifteen (15) million of its other naturalized citizens because of their national origin/ancestry – a strict scrutiny characteristic, this Court has no higher duty than to inform petitioner and the millions of other victims of such invidious discrimination across the nation whether they are required to endure such discrimination and why.

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scrutiny so race and national origin cases can be used interchangeably. See United States v. Virginia, 518 U.S. 515, 532 n. 6 (1996) (noting that "[t]he Court has thus far reserved most stringent judicial scrutiny for classifications based on race or national origin"). See also Jana-Rock Const., Inc. v. New York State Dept. of Economic Development, 438 F.3d 195, 200 (2d Cir. 2006) ("The classifications that are the subject of this appeal are based on national origin rather than race. It is undisputed, however, that principles of analysis applicable to race-based affirmative action programs are the same as those applicable to national-origin-based affirmative action programs. We therefore use the terms interchangeably."

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regret, has described its decision in Dredd Scott as a great "self-inflicted wound." South Carolina v. Regan, 465 U.S. 367, 412 (1984).

III. CONCLUSION

Based on the foregoing, this Honorable Court should find that petitioner has established standing and that this Court has jurisdiction over this action.

Dated: Queens Village, New York
October 26 2011

Respectfully submitted,

/s/ Abdul Hassan

Abdul Karim Hassan, Esq.
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Standing Declaration

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

Abdul Karim Hassan, Petitioner, -v- Federal Election Commission, Respondent.	**Docket #: 11-CV-1354** **Standing Declaration**

ABDUL KARIM HASSAN ("petitioner"), an attorney and member of the bar of the State of New York, declares and states under penalty of perjury:

1. I am the petitioner in the above-entitled action.

2. I submit this Declaration in support of petitioner's standing in and this Court's jurisdiction over this action.

3. This Declaration is made on the basis of my personal knowledge of the facts and circumstances of the case, the records, pleadings and submissions, my investigation into the matter and upon information and belief.

EXHIBITS

4. The FEC's September 2, 2011 ruling which is the subject of this action is included herein as **Exhibit 1**.

5. Plaintiff's request for opinion to the FEC is included herein as **Exhibit 2**.

6. **Exhibit 3** is petitioner's July 2011 supplemental submission to the FEC's outlining in further detail the argument that the natural born provision has been trumped by the Fifth and Fourteenth Amendments.

7. The transcript of the FEC's September 1, 2011 deliberations is included herein as **Exhibit 4**.

8. The exhibits herein and attached hereto are true and accurate copies of the originals.

STATEMENT OF FACTS

9. Petitioner Abdul Karim Hassan ("petitioner" or "Hassan") was born in 1974 in the country of Guyana.

10. Petitioner's race is East Indian.

11. Petitioner is a naturalized American citizen.

12. Petitioner satisfies all of the constitutional requirements for holding the Office of President of the United States except the requirement of natural born status. See U.S. Constitution, Article II, Section 1, Clause 5 ("Natural Born Provision").

13. In March 2008, petitioner announced his candidacy for the Presidency of the United States through his presidential website at www.abdulhassanforpresident.com.

14. Petitioner is currently focused on the 2012 presidential elections but if he not successful in 2012, petitioner intends to continue his current campaign without interruption until the next presidential elections in 2016.

15. Since the announcement of his candidacy in March 2008, petitioner has used and will continue to use without interruption, his presidential website in much the same way as the leading presidential candidates – to promote and

communicate his candidacy, issue positions and campaign to voters and the public.

16. In order to compliment and improve the use of the website, petitioner has purchased and paid for a national presidential advertising campaign through Google. This advertisement has been running and will continue to run and it links to petitioner's presidential website.

17. In addition, petitioner has done interviews with and has been covered by both print and radio media.

18. Petitioner's presidential candidacy and campaign have also been covered widely on the internet as a quick online search will reveal.

19. In July 2011, petitioner sought presidential ballot access rulings from election authorities in all fifty states in light of his status as a naturalized citizen and several states have already provided responses. See www.abdulhassanforpresident.com/ballot_access/rulings.pdf.

20. This growth in petitioner's presidential campaign and candidacy has resulted in thousands of hits each month to petitioner's presidential website from all across the country and the growth continues.

21. Petitioner will continue to build on this initial success and continue to promote his candidacy and ideas to more and more voters across the country.

22. Shortly after announcing his presidential candidacy, petitioner, on March 5, 2008, commenced an action in the United States District Court for the Eastern District of New York, seeking a declaration that the invidious national origin discrimination in the natural born provision has been trumped by the equal protection guarantee of the Fifth Amendment and the citizenship clause of the Fourteenth Amendment. That case has worked its way to the U.S. Supreme Court where a petition for certiorari is pending. See Supreme Court Docket #: 11-507.

23. As petitioner's campaign has grown, he has received pledges of financial support from family, friends and supporters. However, because of obstacles created by the natural born provision, and before accepting campaign contributions, petitioner sought a ruling from the FEC as to whether he can

solicit and receive campaign contributions as a naturalized citizen, and relatedly, whether he can receive matching funds, before accepting campaign contributions. (See Ex. 2 and 3).

24. In its subject September 2, 2011 ruling (Ex. 1, pg 3-4), the FEC ruled that petitioner is not eligible for matching funds and opined in its ruling (Ex. 1, pg 5) and deliberations (Ex. 4 - Tr. 12:22-25; 13:1-9) that even collecting presidential campaign contributions may constitute fraud and deceptive practices under state and other federal laws because of petitioner's status as a naturalized citizen. See also (Ex. 4 - Tr. 12:10-13; 12:19-25; 13:1-9; 7:1-9; 16:10-13; 19:5-9).

25. The FEC's ruling and opinion about matching funds and deceptive practices and fraud has also had a stigmatizing and delegitimatizing effect on petitioner's campaign and a negative impact on voter support and hence, the building of a donor base and campaign contribution pledges. For example, an article on the National Journal[1] carried the headline, "FEC: No U.S. Birth Certificate; No Presidential Matching Funds" and the sub-heading, "Commissioners cite Constitution in case of naturalized citizen."

[1] http://www.nationaljournal.com/hotline/campaign-law-watch/fec-no-u-s-birth-certificate-no-presidential-matching-funds-20110903

26. Even though the FEC's ruling has prevented petitioner from collecting contributions including contributions pledged by supporters, so that the campaign momentum is not broken or lost, petitioner has had to continue to spend his time, effort and money to build his potential voter and donor base. In other words, while the denial of opportunity to receive matching funds is the main and obvious form of injury, petitioner has and is being injured further by the expenditure of time, effort and money in pursuit of contributions and matching funds while this case is ongoing.

27. In the world of modern presidential campaigns, one of the major purposes of a presidential website is to raise campaign funds over the internet through the use of credit cards, computer databases and management etc. Given the nationwide wide reach of the internet, presidential websites are ideal for raising campaign funds across the several states especially for matching fund purposes. However, even though petitioner has been expending time and money to operate his presidential website the FEC's ruling has effectively denied him the use of his website for fund raising purposes.

28. Because petitioner is very serious and committed to a presidential run, and on a long term basis if necessary, petitioner has purchased several versions of the internet domain name "abdulhassanforpresident.com" including the .net and .org versions, in order to keep these domain names out of the hands of competitors – upon information and belief, this is a common practice of many presidential candidates, including the leading ones.

29. Since announcing his presidential candidacy in March 2008, petitioner has paid annual registration fees for his presidential domains, and in addition, petitioner has paid monthly fees to host and operate his presidential website. Petition has also been paying monthly fees for a nationwide advertising campaign that links to petitioner's presidential website. Petitioner has also expended time and effort in developing the site's infrastructure and content. These expenditures will continue into the future unless this Court and/or the Supreme Court rules that the natural born provision has not been trumped.

30. While denying petitioner the opportunity to receive matching funds, the FEC in the same September 2, 2011 ruling, ruled that petitioner is required to comply with the record-keeping, expenditure and other requirements of the federal election laws and plaintiff has been and will continue to spend

money, time and effort to comply while being effectively barred by the FEC's ruling from receiving contributions and matching funds to pay for these and the other costs outlined above.

31. Invidious discrimination based on strict scrutiny characteristics like that engaged in by the FEC in its matching fund ruling, causes tremendous harm by stigmatizing those discriminated against. Here, the FEC's ruling endorses the legally "impermissible" rationale behind the natural born provision that naturalized citizens cannot be trusted. Such stigmatization is especially harmful in the context of a presidential campaign where trust is critical to winning voter support and elections. In fact, shortly after the FEC's September 2, 2011 ruling, petitioner did a radio interview in New York City in which the interviewer focused on the distrust of naturalized citizens based on the natural born provision as endorsed in the FEC ruling.

32. If this Court and/or the U.S. Supreme Court rules that the natural born provision has been trumped, petitioner will promptly start collecting contributions, including through his presidential website, from those who have made pledges and others, and plaintiff will expand his donor base even more though additional advertising and campaigning.

33. Likewise, if petitioner obtains a favorable ruling that the natural born provision has been trumped, petitioner will not only begin collecting contributions but will seek to obtain matching funds as well.

34. Denial of matching funds, has and will injure petitioner beyond the amount of matched funds petitioner would otherwise be entitled to because the availability of a match positively influences people to contribute or contribute more – motivated by the knowledge that a portion of what they contribute will be matched. Because of this dynamic it is quite common for organizations of all types, in and out of politics, to use "matching" to encourage and increase donations. The FEC's ruling has and will deprive petitioner of this additional benefit.

35. In light of the above, the FEC's ruling that petitioner cannot receive matching funds because of his naturalized status, forces him to compete on an unequal footing with natural born candidates for matching funds and the Presidency. Petitioner has been seriously harmed as a result and has standing to challenge this invidious strict scrutiny national origin discrimination upon which the FEC's ruling is based.

I declare pursuant to 28 U.S.C § 1746, under penalty of perjury that the foregoing is true and correct.

Executed on October 26, 2011

/s/ Abdul Hassan
Abdul Karim Hassan
Petitioner, Pros Se

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

Abdul Karim Hassan, Petitioner, -v- Federal Election Commission, Respondent.	**Docket #: 11-CV-1354** **CERTIFICATE OF SERVICE**

I hereby certify that on November 17, 2011, Petitioner's reply to respondent's response/opposition to petitioner's motion to certify and/or expedite and in response/opposition to respondent's motion to dismiss for lack of jurisdiction, was field with t he Clerk of this Court using the CM/ECF system, which will send electronic notice of such filing to counsel of record for respondent and all parties.

Dated: Queens Village, New York
November 17, 2011

Respectfully submitted,

/s/ Abdul Hassan

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