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FEDERAL ELECTION COMMISSION
Washington, DC 20463

January 14, 2021

ADVISORY OPINION 2020-02

Jean-Marc Bertrand
1770 Queen Street East
Toronto, ON M4L 1G7

Dear Mr. Bertrand:

We are responding to your request for an advisory opinion concerning the application of the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to your proposed purchase of online political advertisements in connection with elections in the United States. Based on your representation that you are a U.S. citizen, the Commission concludes that the Act and Commission regulations do not prohibit your proposed purchase of such online political advertisements even though you reside abroad. The Commission also concludes that neither the Act nor Commission regulations require you to provide Facebook or any other media platform with proof of a U.S. bank account or a U.S. residential address as a prerequisite to the purchase of political advertisements on their platforms.

Background

The facts presented in this advisory opinion are based on your letter received on May 29, 2020, and email dated December 10, 2020. You represent that you are a U.S. citizen currently residing in Canada. Advisory Opinion Request at AOR001. You intend to organize voters in the U.S. to vote for third party presidential and vice presidential candidates. AOR003; Advisory Opinion Request Supplement (Dec. 10, 2020) (“AOR Supp.”). In furtherance of this effort, you have attempted to purchase political advertisements on Facebook. *Id.* You state that in order to purchase these advertisements, Facebook requires you to meet certain qualifications, including, but not limited to, providing a U.S. residential address and making all payments from a U.S. bank account in U.S. dollars. AOR002-05; AOR Supp. You state that you do not meet these qualifications because you do not have a U.S. residence or a U.S. bank account. AOR003-05; AOR Supp.

Questions Presented¹

1. *Are you, a U.S. citizen residing in Canada, permitted to make expenditures, independent expenditures, and disbursements for political advertisements under the Act and Commission regulations?*²

2. *Do the Act or Commission regulations require you to provide Facebook or any other social media platform with proof of a U.S. bank account or financial instrument(s) drawn on a U.S. bank as a prerequisite to the purchase of political advertisements on their platforms?*

3. *Do the Act or Commission regulations require you to provide Facebook or any other media platform with a U.S. address as a prerequisite to the purchase of political advertisements on their platforms?*

4. *Can Facebook or any other media platform use this advisory opinion in place of their existing political advertisement guidelines and methods as legal proof that you are a U.S. citizen who is allowed to participate in domestic political activities just as if you resided in the U.S.?*

5. *Will this advisory opinion absolve Facebook or any other media platform of further requirements to prove that you are a U.S. citizen who is allowed to participate in domestic political activities just as if you resided in the U.S.?*

6. *Should it be compulsory for Facebook or any other media platform to impose the same qualifications on resident and non-resident U.S. citizens for advertising political content on their platforms in the U.S.?*

¹ The questions presented herein have been edited slightly from the original questions posed in the request for clarity and so they can be appropriately addressed by the Commission.

² The request asks the Commission to determine whether you are a U.S. citizen who is legally allowed to engage in political advertising and other political activities. Whether you are a U.S. citizen is not a question the Commission can answer through the advisory opinion process because it does not involve the application of the Act, Commission regulations, or chapters 95 or 96 of the Internal Revenue Code, and is therefore outside the scope of the Commission's jurisdiction. *See* 52 U.S.C. § 30108(a)(1); 11 C.F.R. §§ 112.1(a)-(b). Therefore, for the purpose of answering the questions presented in your request, the Commission assumes (but does not vouch for) the accuracy of your statement that you are a U.S. citizen. AOR001. The Commission further assumes that you are aware of and will comply with all requirements and prohibitions under the Act and Commission regulations not explicitly addressed herein. *See, e.g.*, 52 U.S.C. § 30122 (prohibiting the making of a contribution in the name of another person); 11 C.F.R. § 110.4(b) (same); 52 U.S.C. § 30104(c) (requiring the filing of reports by persons other than political committees who make independent expenditures in an aggregate value in excess of \$250 during a calendar year); 11 C.F.R. § 109.10(b) (same).

Legal Analysis and Conclusions

1. *Are you, a U.S. citizen residing in Canada, permitted to make expenditures, independent expenditures, and disbursements for political advertisements under the Act and Commission regulations?*

Yes, as a U.S. citizen, you may make expenditures, independent expenditures, and disbursements for political advertisements in connection with federal, state, and local elections. The Act and Commission regulations do not distinguish between a U.S. citizen residing in the U.S. and a U.S. citizen residing abroad.

Commission regulations prohibit a foreign national from making “any expenditure, independent expenditure, or disbursement in connection with any Federal, State, or local election.” 11 C.F.R. § 110.20(f); *see also* 52 U.S.C. § 30121(a). This provision does not prohibit U.S. citizens from making expenditures, independent expenditures, or disbursements in connection with U.S. elections, however, regardless of their place of residence.³ Therefore, the Act and Commission regulations do not prohibit you, as a U.S. citizen residing in Canada, from making independent expenditures or disbursements for political advertisements in connection with federal, state, or local elections.

2. *Do the Act or Commission regulations require you to provide Facebook or any other social media platform with proof of a U.S. bank account or financial instrument(s) drawn on a U.S. bank as a prerequisite to the purchase of political advertisements on their platforms?*

3. *Do the Act or Commission regulations require you to provide Facebook or any other media platform with a U.S. address as a prerequisite to the purchase of political advertisements on their platforms?*

No, neither the Act nor Commission regulations require you to provide Facebook or any other media platform with proof of a U.S. bank account, financial instruments drawn on a U.S. bank, or a U.S. residential address as a prerequisite to the purchase of political advertisements on their platforms.

In addition to prohibiting foreign nationals from making expenditures, independent expenditures, or disbursements in connection with federal, state, or local elections, as discussed above, Commission regulations prohibit any person from “knowingly” providing substantial assistance in the making of an expenditure, independent expenditure, or disbursement by a foreign national. 11 C.F.R.

³ *See* 52 U.S.C. § 30121(b)(1) (providing that “foreign national” does not include “any individual who is a citizen of the United States”); 11 C.F.R. § 110.20(a)(3)(iii) (same); *see also* 93 Cong. Rec. S4715 (daily ed. March 28, 1974) (statement of Sen. Bentsen) (indicating congressional intent to ensure U.S. citizens abroad could participate in U.S. elections); Advisory Opinion 2016-10 (Parker) at 2-3 (concluding that U.S. citizen living in Canada may solicit contributions to state and local party committees).

§ 110.20(h)(2). In a related context, “knowingly” means⁴: (i) having actual knowledge that the source of the funds is a foreign national; (ii) being aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds is a foreign national; or (iii) being aware of facts that would lead a reasonable person to inquire whether the source of the funds is a foreign national, but failing to conduct a reasonable inquiry. *Id.* § 110.20(a)(4). The provision of a foreign address or residence abroad would lead a reasonable person to inquire whether the source of funds solicited, accepted, or received is a foreign national. *See id.* § 110.20(a)(5)(ii), (iv).

The Commission has encouraged commercial entities that process third party contributions to adopt screening procedures to avoid processing contributions from prohibited sources.⁵ Such efforts can also assist these entities in meeting their legal obligation to avoid substantially assisting foreign nationals in making independent expenditures or disbursements through the purchase of advertising on their platforms. *See id.* § 110.20(h)(2). Neither the Act nor Commission regulations require you to provide such proof as a prerequisite to the purchase of online political advertisements, nor has the Commission had occasion to review the particular screening procedures adopted by Facebook. While, as noted above, the Commission has as a general matter encouraged the adoption of screening procedures, we express no views on the particular procedures Facebook has adopted.

4. *Can Facebook or any other media platform use this advisory opinion in place of their existing political advertisement guidelines and methods as legal proof that you are a U.S. citizen who is allowed to participate in domestic political activities just as if you resided in the U.S.?*

5. *Will this advisory opinion absolve Facebook or any other media platform of further requirements to prove that you are a U.S. citizen who is allowed to participate in domestic political activities just as if you resided in the U.S.?*

No, this advisory opinion does not serve as legal proof that you are a U.S. citizen or relieve any entity of its obligation to comply with the Act and Commission regulations. As explained above, the Commission has assumed the accuracy of your representation that you are a U.S. citizen for purposes of this advisory opinion but has not made any determination to that effect, nor does it have the authority to make such a determination. *Supra* n.2; AOR001. For the purpose of rendering an advisory opinion, representations made by a requestor are assumed to be accurate; if a material fact on which the Commission relied is not accurate, the requestor may not rely on the advisory opinion. The Commission therefore relies on your representation that you are a U.S.

⁴ This definition of “knowingly” relates to the prohibition on knowingly providing substantial assistance to a foreign national in the making of contributions or donations in connection with federal, state, and local elections. *See* 11 C.F.R. § 110.20(h)(1).

⁵ *See, e.g.*, Advisory Opinion 2019-04 (Prytany) at 6 (concluding that commercial vendors providing online contribution-processing services should adopt screening procedures to ensure that contributions do not come from prohibited sources, including foreign nationals); Advisory Opinion 2016-08 (eBundler.com) at 7 (same); Advisory Opinion 2007-04 (Atlatl) at 4 (same).

citizen but this advisory opinion does not establish whether you are in fact a U.S. citizen. Further, to the extent that your questions concern the activities of third parties, they do not qualify as advisory opinion requests. 11 C.F.R. § 112.1(b).

6. *Should it be compulsory for Facebook or any other media platform to impose the same qualifications on resident and non-resident U.S. citizens for advertising political content on their platforms in the U.S.?*

The Commission declines to answer this question because it presents a general question of interpretation of the Act or Commission regulations. As such, this question does not qualify as an advisory opinion request. 11 C.F.R. § 112.1(b).

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,



Shana M. Broussard
Chair