



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: The Commission

FROM: Office of the Commission Secretary ^{VFV}

DATE: December 15, 2021

SUBJECT: Comments on Draft AO 2021-13 (Hoh)

Attached are comments received from Common Cause.

Attachment



RECEIVED

By Office of the Commission Secretary at 2:44 pm, Dec 15, 2021

COMMON CAUSE

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December 15, 2021

Submitted Electronically (ao@fec.gov)

Federal Election Commission

Attn.: Ms. Lisa J. Stevenson, Acting General Counsel
Mr. Neven F. Stipanovic, Associate General Counsel
Ms. Amy Rothstein, Assistant General Counsel
Mr. Kevin Paulsen, Attorney

Office of the General Counsel
1050 First Street NE
Washington, DC 20463

Re: Comments on Draft Advisory Opinion 2021-13 (Hoh)

Dear Ms. Stevenson, Mr. Stipanovic, Ms. Rothstein and Mr. Paulsen:

These comments are submitted by Common Cause in response to draft Advisory Opinions 2021-13, produced in response to a request by Mr. Matthew P. Hoh for the Commission's opinion whether his Veteran Administration disability pay qualifies as "earned income" for the purpose of the Commission's candidate salary regulation found at 11.C.F.R. § 113.1(g)(1)(i)(I). Equity requires the Commission to interpret and apply the candidate salary regulation to Mr. Hoh in a way that allows Mr. Hoh to receive a salary from his campaign committee, in order to enable him to run for office. Common Cause therefore supports the outcome of "Draft A" (Agenda Doc. No. 21-43-A), which concludes that Mr. Hoh's disability benefits constitute "earned income," therefore enabling Mr. Hoh to receive a candidate salary.

However, Common Cause respectfully urges the Commission to revise the draft to acknowledge that this treatment of disability benefits as earned income is incongruent with the treatment of disability benefits in other areas of law—and to emphasize that the advisory opinion is limited to its facts and circumstances and should not be considered legal precedent by any other government agency in a manner that could negatively impact the ability of individuals with disabilities to receive government benefits.

Common Cause further urges the Commission to proceed swiftly with the rulemaking on "candidate salaries" proposed by petition in March of this year—including, as relates to the present advisory opinion proceeding, recommended amendments to the "lesser of" formula of 11.C.F.R. §113.1(g)(1)(i)(I) to establish a minimum candidate salary of no less than the annualized salary of \$15 per hour. See REG 2021-01, Notice of Availability, 86 Fed. Reg. 23300 (May 3, 2021). Once amendments are finalized, the Commission should take the opportunity to include in the revised regulation's

Explanation and Justification a clear statement that Commission treatment of disability payments as earned income in Advisory Opinion 2021-13 is nullified and superseded by the revised regulation.

Common Cause strongly supports empowering more everyday Americans to run for office because more representation “at the table” is the best avenue to deliver more representative policies for more people. As we work to build a more inclusive and representative democracy, we must remove inequitable barriers that prevent many Americans with disabilities from running for office.

Congressional candidates who represent the diversity of America must be able to seek federal office without worrying about a living wage. According to recent research by the “Reflect Us Coalition,” in 26 states there is no known disabled person elected at the local, state, or national level.¹

Moreover, only 2% of the members of Congress have working-class backgrounds, and millionaires make up more than half of Congress although they are less than 5% of the national population.² Consequently, public policy decisions made by Congress too often reflect the interests and preferences of the wealthy few, not the vast majority of Americans.

Big Money still unduly influences who can run for office and win. Big Money can also corrupt the legislative process with appearances of quid pro quo favors, access, and undue influence over the agenda that elected officials pursue when they get into office. Possibility is born of democracy, but Big Money has our democracy in a stranglehold. We must make it easier for everyday Americans—including disabled veterans—to represent us in Washington.

One step is to remove inequitable barriers to participation for candidates. Accordingly, Common Cause strongly urges that the Commission opinion that, in these limited circumstances, Mr. Hoh’s disability benefits would satisfy the “earned income” requirement for the purpose of 11.C.F.R. §113.1(g)(1)(i)(I). This would allow him a candidate salary in his planned run for Senate in 2022.

Common Cause *also* urges the Commission to move forward expeditiously with the regulation amendments proposed by Ms. Nabilah Islam’s rulemaking petition in March 2021, addressing the broader needs of working-class Americans seeking elective office. For too long non-wealthy people, including many people with disabilities, have been excluded from public office by a *de facto* wealth barrier. Their voices are the ones we need in Washington and across the country.

Common Cause appreciates the Commission’s consideration of these issues and the opportunity to submit comments.

¹ Tiffany Gardner, Erin Loos Cutraro and Cynthia Richie Terrell, “Representative Democracy Requires Inclusion of All Abilities,” Ms. Magazine: <https://msmagazine.com/2021/08/30/disabled-women-politics-elections-representation/>.

² The Center for Responsive Politics publishes the annual financial disclosure provided by members of Congress at www.OpenSecrets.org/personal-finances. Open Secrets also published a series on the topic recently: <https://www.opensecrets.org/news/2020/04/majority-of-lawmakers-millionaires/>.



Sincerely,

/s/ Beth A. Rotman

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