



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 23, 2022

ADVISORY OPINION 2022-08

Brandis L. Zehr, Esq.  
Christopher J. White, Esq.  
Wiley Rein LLP  
2050 M Street NW  
Washington, DC 20036

Erin Clark  
General Counsel  
NRCC  
320 First Street SE #2  
Washington, DC 20003

Dear Counsel:

We are responding to your advisory opinion request on behalf of the National Republican Congressional Committee (“NRCC”) and its members concerning whether, under the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations, the NRCC’s members may raise contributions subject to a separate contribution limit for the New York congressional primary election on August 23, 2022.<sup>1</sup> The Commission concludes that the NRCC’s members may do so.

***Background***

The facts presented in this advisory opinion are based on your letter received on May 26, 2022, the supplement to your advisory opinion request dated June 17, 2022, and publicly available information from the Commission’s and the New York State Board of Elections’ websites.

---

<sup>1</sup> Although the advisory opinion request was also submitted on behalf of “other Republican candidates who are seeking nomination for election to the U.S. House of Representatives from New York,” Advisory Opinion Request (“AOR”) at AOR001-2, questions “regarding the activities of third parties[] do not qualify as advisory opinion requests.” 11 C.F.R. § 112.1(b). Accordingly, this advisory opinion addresses the request only insofar as it pertains to the NRCC’s members. *See, e.g.*, Advisory Opinion 2021-03 (NSRC *et al.*) (responding to advisory opinion request submitted by national party committees on behalf of their members). Any person involved in any specific transaction or activity that 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); *infra* at 6.

The NRCC is a national party committee comprising all sitting Republican Members of the United States House of Representatives.<sup>2</sup> The NRCC's primary function is to aid in the election of Republican candidates for office. In that role, the NRCC provides guidance to Republican candidates for federal office and officeholders.

Congressional candidates in New York were running for their party's nomination in the June 28, 2022, primary election under district maps enacted by the state legislature in February 2022.<sup>3</sup> But on March 31, 2022, a state trial court found the February maps to be unconstitutional under New York's constitution and enjoined the state from using the maps for its 2022 elections.<sup>4</sup> This ruling was immediately appealed to an intermediate appellate court in New York,<sup>5</sup> and the date of the election, ballot access requirements, and district lines remained in flux for most of April.

On April 8, 2022, the intermediate appellate court entered a partial stay of the trial court's order pending resolution of the appeal.<sup>6</sup> The stay applied to the provisions of the court order that enjoined the state from using the February district maps, thereby allowing, among other things, candidates for Congress, State Senate, and Assembly to file designating petitions and the boards of elections to accept their petitions, but did not prohibit the trial court from retaining an expert to prepare revised district maps.

Almost two weeks later, the intermediate appellate court affirmed the trial court's invalidation of the February maps.<sup>7</sup> This was soon followed by a decision from the state's highest court, which instructed the trial court to employ a special master to draw and adopt new, constitutional maps "with all due haste."<sup>8</sup> On April 29, the trial court instructed the special master to finalize revised congressional maps by May 20, and set a new primary date of August 23, 2022.<sup>9</sup>

---

<sup>2</sup> See NRCC, Statement of Organization, FEC Form 1, Amendment (May 17, 2022), <https://docquery.fec.gov/pdf/874/202205179512382874/202205179512382874.pdf>.

<sup>3</sup> AOR002 (citing N.Y. Elec. Law § 8-100).

<sup>4</sup> *Harkenrider v. Hochul* ("Harkenrider Trial Court I"), No. E2022-0116CV, 2022 WL 1819491, at \*13 (Mar. 31, 2022).

<sup>5</sup> AOR002.

<sup>6</sup> *Harkenrider v. Hochul* ("Harkenrider Intermediate Appellate I"), No. CAE 22-00506, at 1-3 (N.Y. App. Div. Apr. 8, 2022); AOR006-008.

<sup>7</sup> *Harkenrider v. Hochul* ("Harkenrider Intermediate Appellate II"), No. CAE 22-00506, 2022 WL 1193180, at \*5 (N.Y. App. Div. Apr. 21, 2022).

<sup>8</sup> *Harkenrider v. Hochul* ("Harkenrider Final Appeal"), No. 60, 2022 WL 1236822, at \*13 (N.Y. Apr. 27, 2022).

<sup>9</sup> *Harkenrider v. Hochul* ("Harkenrider Trial Court II"), No. E2022-0116CV, at 2 (N.Y. Sup. Ct. Apr. 29, 2022); AOR010.

After a group of New York voters unsuccessfully challenged the state’s rulings in federal court,<sup>10</sup> on May 11 the state trial court set the ballot access rules for the August primary.<sup>11</sup> According to the court order, candidates who had previously submitted a valid petition for the June primary did not automatically qualify for the August primary; they could, however, use their prior petitions to obtain ballot access for the August primary “in **any** one Congressional district” by filing a “signed writing” identifying the district “with the appropriate board of elections” by May 31.<sup>12</sup> Additionally, any candidate who did not qualify for the June primary could obtain ballot access for the August primary by submitting a valid petition, with new signature requirements, by new deadlines.<sup>13</sup>

The special master released final draft congressional maps on May 20.<sup>14</sup> The final draft maps proposed to change the boundaries of each of New York’s congressional districts as they appeared on the February maps.<sup>15</sup> On May 20, the state trial court adopted the final draft maps as proposed by the special master, thereby setting the district lines for the August primary.<sup>16</sup>

### ***Question Presented***

*Due to the court-ordered August 23, 2022, New York Congressional primary and associated “new electoral situation,” are federal candidates seeking nomination for election to the United States House of Representatives from New York entitled to separate contribution limits for the court-ordered August 23, 2022, primary?*

---

<sup>10</sup> On May 2, while the state trial court was working with the special master to create remedial maps, a group of New York voters brought an action in federal district court seeking to compel New York to use the February maps for its 2022 elections. AOR002. On May 10, the district court denied that request and ordered the 2022 primary elections for the United States House of Representatives (and the New York State Senate) to proceed on August 23, using the maps to be prepared by the state trial court. *United States v. New York*, No. 1:10-cv-1214, 2022 WL 1473259, at \*3 (N.D.N.Y. May 10, 2022).

<sup>11</sup> *Harkenrider v. Hochul (“Harkenrider Trial Court III”)*, No. E2022-011CV (N.Y. Sup. Ct. May 11, 2022); AOR011.

<sup>12</sup> *Harkenrider Trial Court III*, No. E2022-011CV at 2(emphasis in original); AOR012; *see also* New York State Board of Elections FAQ — Running for Office, August 23, 2022 Primary Election (May 27, 2022) (“NYSBOE FAQ”) at 1, [https://www.elections.ny.gov/NYSBOE/download/law/FAQ\\_2022\\_August\\_23\\_Primary.pdf](https://www.elections.ny.gov/NYSBOE/download/law/FAQ_2022_August_23_Primary.pdf). The New York State Board of Elections confirmed that, absent such a writing, “the previous petition remains invalid and cannot be used for August ballot access.” NYSBOE FAQ at 1.

<sup>13</sup> *See Harkenrider Trial Court III*, No. E2022-011CV at 2; NYSBOE FAQ at 2. The court established a “filing period” of June 8 to June 10.

<sup>14</sup> AOR003.

<sup>15</sup> AOR004.

<sup>16</sup> *Harkenrider v. Hochul (“Harkenrider Trial Court IV”)*, No. E2022-0116CV (N.Y. Sup. Ct. May 21, 2022); AOR016.

***Legal Analysis***

Yes, members of the NRCC who are seeking nomination for election to the United States House of Representatives from New York are entitled to separate contribution limits for the court-ordered August 23, 2022, primary.

Under the Act, candidates and their authorized committees are entitled to separate individual contribution limits with respect to “any election for Federal office.”<sup>17</sup> For the purposes of the Act and Commission regulations, an “election” includes “a general, special, primary, or runoff election,”<sup>18</sup> where an individual, “whether opposed or unopposed, seek[s] nomination for election, or election, to Federal office.”<sup>19</sup> A primary election is an election “held prior to a general election, as a direct result of which candidates are nominated, in accordance with applicable State law, for election to Federal office in a subsequent election.”<sup>20</sup>

Because contribution limits “apply separately with respect to each election,”<sup>21</sup> participating in multiple distinct elections “can render a candidate eligible for separate contribution limits.”<sup>22</sup> As the Commission has explained, “separate contribution limits are permitted when a judicial decision ‘create[s] a new election under the Act and Commission regulations.’”<sup>23</sup>

Here, preparations for the June primary were already well under way by the time the state courts established the new election date, ballot access requirements, and district lines for candidates wishing to run in the New York primary. It was not until March 31— less than three months before the scheduled June primary — that the trial court found the February congressional district maps to be unconstitutional,<sup>24</sup> and the state continued to use those maps while litigation ensued.<sup>25</sup> There was no new election date

---

<sup>17</sup> 52 U.S.C. § 30116(a)(1)(A).

<sup>18</sup> *Id.* § 30101(1)(A).

<sup>19</sup> 11 C.F.R. § 100.2(a).

<sup>20</sup> *Id.* § 100.2(c)(1).

<sup>21</sup> *Id.* § 110.1(j)(1).

<sup>22</sup> Advisory Opinion 2016-09 (Martins for Congress) at 3; Advisory Opinion 2016-03 (Holding for Congress) at 4.

<sup>23</sup> Advisory Opinion 2016-09 (Martins for Congress) at 3 (quoting Advisory Opinion 2016-03 (Holding for Congress) at 4).

<sup>24</sup> *Harkenrider Trial Court I*, 2022 WL 1819491, at \*13.

<sup>25</sup> *Harkenrider Intermediate Appellate I*, No. CAE 22-00506, at 1-2; AOR006-7 (issuing partial stay requiring state to continue using February maps while litigation ensued).

until the trial court's April 29 order,<sup>26</sup> and no new ballot access rules until the trial court's May 11 order.<sup>27</sup> Further, the district lines of the newly established August primary were not set until the trial court's May 20 order.<sup>28</sup> By that time, the ballot access deadline for the June primary had long passed.<sup>29</sup> Under the new rules, candidates who had qualified for the June ballot did not automatically qualify for the August ballot; candidates who did not qualify for the June ballot had an opportunity to qualify for the August ballot; and all candidates had to determine which district, with different boundary lines, to run in.<sup>30</sup>

The Commission was presented with a similar situation in Advisory Opinion 2016-03 (Holding for Congress). In that advisory opinion, a court invalidated district maps and, “just a few weeks away” from the previously scheduled primary (for which voting was already under way), required the legislature to enact new maps, set a new election date — which the legislature set at more than three months away — and change election procedures.<sup>31</sup> The Commission concluded that a separate contribution limit was warranted under those circumstances because the court's actions had created a “new electoral situation.”<sup>32</sup> The Commission explained that, “[a]s a direct result of the court order and changes in state law, congressional candidates were required to file new candidacies in congressional districts with new boundaries and prepare, plan, and campaign for a new election more than three months away and held under new rules.”<sup>33</sup>

Similarly, here, the cumulative effect of the courts' orders, culminating in the May 20 court order establishing the district lines,<sup>34</sup> created a new electoral situation that required candidates to file in congressional districts with new boundaries and prepare, plan, and campaign for a new election more than three months away held under new rules and, potentially, against new opposing candidates. Because of the “unusual electoral

---

<sup>26</sup> *Harkenrider Trial Court II*, No. E2022-0116CV, at 2; AOR010.

<sup>27</sup> *Harkenrider Trial Court III*, No. E2022-011C, at 2-5; AOR012-15.

<sup>28</sup> *Harkenrider Trial Court IV*, No. E2022-0116CV, at 5; AOR020.

<sup>29</sup> AOR003 (explaining that, under N.Y. Elect. Law § 6-158(1), the deadline to file “designating petition” for June 28 primary was April 7).

<sup>30</sup> *Harkenrider Trial Court III*, No. E2022-011CV; AOR011 (explaining the new ballot access requirements).

<sup>31</sup> Advisory Opinion 2016-03 (Holding for Congress) at 5.

<sup>32</sup> *Id.* at 4-5; *see also* Advisory Opinion 2006-26 (Texans for Henry Bonilla) (approving separate contribution limit following judicial invalidation of nomination of requestor and ordering special general election in his district); Advisory Opinion 1996-37 (Brady for Congress) (approving separate contribution limit following judicial nullification of earlier primary election results and scheduling of special election); Advisory Opinion 1996-36 (Frost *et al.*) (same).

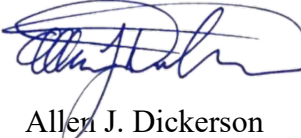
<sup>33</sup> Advisory Opinion 2016-03 (Holding for Congress) at 5.

<sup>34</sup> *Harkenrider Trial Court IV*, No. E2022-0116CV, at 4; AOR020.

circumstances stemming from judicial actions affecting congressional elections,”<sup>35</sup> the Commission thus concludes that NRCC members who sought nomination for election to the United States House of Representatives from New York for the originally scheduled primary election of June 28, 2022, are entitled to a new contribution limit for the August 23, 2022, primary election.<sup>36</sup> The new limit applies to contributions made after May 20, 2022 (the date of the court’s final order setting the district lines for the August 23 election).<sup>37</sup>

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.<sup>38</sup> 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 that 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.<sup>39</sup> 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,



Allen J. Dickerson  
Chairman

---

<sup>35</sup> Advisory Opinion 2016-03 (Holding for Congress) at 5.

<sup>36</sup> This situation differs materially from the one considered in Advisory Opinion 1982-22 (Bartlett), where the Commission concluded that pre-election court-ordered redistricting did not entitle candidates to a new contribution limit because the court-ordered redistricting occurred several months before the election and did not result in a change in the election date, electoral procedures, or candidate eligibility requirements.

<sup>37</sup> Contributions received for the June election do not have to be aggregated with contributions received for the August election, but remain subject to the limits of 52 U.S.C. § 30116. In addition, any unused contributions lawfully made for the June election do not have to be redesignated by the contributors for the August election. *See* Advisory Opinion 2006-26 (Texans for Henry Bonilla) at 4; Advisory Opinion 1997-37 (Brady for Congress Committee) at 3; Advisory Opinion 1996-36 (Frost *et al.*) at 5.

<sup>38</sup> *See* 52 U.S.C. § 30108.

<sup>39</sup> *See id.* § 30108(c)(1)(B).