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By Office of General Counsel at 3:39 pm, May 26, 2022

May 26, 2022

**VIA EMAIL**

Federal Election Commission  
Office of General Counsel  
1050 First Street, NE  
Washington, DC 20463

**Re: Advisory Opinion Request (NRCC)**

Dear Commissioners:

The National Republican Congressional Committee (“NRCC”), through undersigned counsel and on behalf of its members and Republican candidates seeking nomination for election to the U.S. House of Representatives from New York, respectfully requests an advisory opinion from the Federal Election Commission (“FEC” or “Commission”) pursuant to 52 U.S.C. § 30108 of the Federal Election Campaign Act of 1971, as amended (the “Act”).<sup>1</sup> The NRCC requests confirmation that federal candidates who are seeking nomination for election to the U.S. House of Representatives from New York may, consistent with FEC Advisory Opinion 2016-03 (Holding), accept contributions for the court-ordered August 23, 2022 congressional primary without regard to any contributions already accepted for the now-cancelled June 28, 2022 congressional primary.

The NRCC respectfully asks that the Commission consider this request expeditiously for the benefit of all federal candidates seeking nomination for election to the U.S. House of Representatives from New York. As explained below, the boundaries of New York’s congressional districts were recently finalized on May 20, 2022, and New York congressional candidates face a “new electoral situation” in the court-ordered August 23, 2022 congressional primary, which is less than three months away.

**BACKGROUND**

**I. NRCC**

The NRCC is a national political party committee under the Act. It is comprised of sitting Republican Members of the U.S. House of Representatives and includes all incumbent Republican House Members. As part of its primary function to aid the election of candidates affiliated with the Republican Party, the NRCC provides guidance to incumbent federal candidates, as well as to challengers and to candidates for open seats. The NRCC submits this request on behalf of its Members from New York who are currently seeking re-election as well as other Republican

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<sup>1</sup> The Commission has previously issued advisory opinions to requestors submitting on behalf of Members of Congress and/or federal candidates. *See, e.g.*, Advisory Opinion 2021-03 (NRSC, NRCC) (issuing advisory opinion applicable to Members of Congress and candidates seeking election to Congress); Advisory Opinion 2006-24 (NRSC, DSCC, Republican State Committee of Pennsylvania) (issuing advisory opinion applicable to federal candidate recount funds).

candidates who are seeking nomination for election to the U.S. House of Representatives from New York.

## II. New York Redistricting Litigation

On February 3, 2022, New York enacted new congressional district maps (“February 3 Maps”) in response to the results of the decennial census conducted in 2020. The then-controlling statutory law in New York provided that primary elections for those newly enacted congressional districts were to take place on June 28, 2022. *See* N.Y. Elec. Law § 8-100. Then, on March 31, 2022, a state trial court in Steuben County, New York found the February 3 Maps to be unconstitutional under New York’s state constitution. *Harkenrider v. Hochul*, Case No. E2022-0116CV (N.Y. Sup. Ct., Mar. 31, 2022). Defendants immediately appealed that ruling to the intermediate appellate court, the New York Supreme Court’s Appellate Division.

On April 8, 2022, the New York Supreme Court’s Appellate Division entered a partial stay that allowed New York to proceed with preparations for its 2022 elections using the February 3 Maps while allowing the trial court to retain a special master to prepare proposed revised congressional district maps while the appeal proceeded. *Harkenrider v. Hochul*, Case No. CAE 22-00506 (N.Y. App. Div., Apr. 8, 2022). On April 21, 2022, the Appellate Division affirmed the trial court’s ruling that the February 3 Maps were unconstitutional under New York’s state constitution. *Harkenrider*, CAE 22-00506 (N.Y. App. Div., Apr. 21, 2022). Defendants again immediately appealed this decision, this time to the New York Court of Appeals, which is the state’s highest appellate court.

On April 27, 2022, the Court of Appeals affirmed the trial court’s ruling that the February 3 Maps were unconstitutional under New York’s state constitution and remanded the matter to the trial court with instructions to employ a special master to draw and adopt new, constitutionally sound maps “with all due haste.” *Harkenrider v. Hochul*, Case No. 60 at 32 (N.Y. Apr. 27, 2022). On April 29, 2022, the trial court issued a Preliminary Order instructing the special master to finalize his remedial congressional district maps by May 20, 2022 and directing the New York State Board of Elections to hold the 2022 primary elections for the U.S. House of Representatives and New York State Senate on August 23, 2022. *Harkenrider*, Case No. E2022-0116CV (N.Y. Sup. Ct., Apr. 29, 2022).

On May 2, 2022, while the Steuben County Supreme Court, the state trial court, was formulating remedial congressional district maps, a group of New York voters brought an action in federal district court seeking an order compelling New York to proceed with the February 3 Maps for its 2022 elections. *See Gaudemar v. Kosinski*, No. 1:22-cv-3534, [Dkt. 1] (S.D.N.Y., May 2, 2022). On May 10, 2022, the federal district court denied that request and ordered the 2022 primary elections for the U.S. House of Representatives and New York State Senate to proceed on August 23, 2022 using the maps being prepared by the Steuben County Supreme Court. *United States of America v. State of New York*, Case No. 1:10-cv-1214, [Dkt. 105] (N.D.N.Y., May 10, 2022).

The Steuben County Supreme Court’s special master released his draft congressional maps for public comment on May 16, 2022. *Harkenrider*, Case No. E2022-0116CV (N.Y. Sup. Ct., May 16, 2022). As widely reported in the press, the draft congressional district maps “upended a number of potential races and sent candidates scurrying to reset their campaigns or reconsider their plans to run.” Bill Mahoney, *New York’s New Congressional Maps Would Place 5 Pairs of Incumbents in the Same Districts*, POLITICO (May 16, 2022), <https://www.politico.com/news/2022/05/16/new-york-new-congressional-maps-incumbents-00032752>. After receiving and reviewing public comment on those drafts, the special master released proposed final congressional redistricting maps on May 20, 2022, and the Steuben County Supreme Court entered a Decision and Order adopting these congressional maps (“Final Maps”) later that night. *Harkenrider*, Case No. E2022-0116CV (N.Y. Sup. Ct., May 21, 2022). The Final Maps, which “are not a drastic overhaul from” the special master’s draft congressional district maps, sparked an “overnight shuffle” as congressional candidates began deciding which new congressional district they will run in. See Bill Mahoney, *Final New York Maps Released and Lead to Midnight Shuffle of Congressional Delegation*, POLITICO (May 21, 2022), <https://www.politico.com/news/2022/05/21/new-maps-new-york-redistricting-00034235>.

Along with new congressional districts with new boundaries, New York congressional candidates also face a new ballot access process. New York statute imposed a deadline of April 7, 2022 for candidates to file the “designating petition” required to appear on the congressional primary ballot. N.Y. Elec. Law § 6-158(1). Recognizing that this deadline had already passed, and the forthcoming Final Maps would contain new congressional district boundaries for the court-ordered August 23, 2022 congressional primary, the Steuben County Supreme Court issued an Order on May 11, 2022 that set forth new ballot access requirements and “political calendar dates . . . for the primary election to be held on August 23, 2022.” *Harkenrider*, Case No. E2022-0116CV, at 2-3 (N.Y. Sup. Ct., May 11, 2022). The Order provided a mechanism by which congressional candidates who had previously submitted a valid designating petition for the June 28, 2022 primary in any congressional district under the February 3 Maps could qualify for *any* congressional district under the forthcoming Final Maps by filing a signed “Certificate to use Prior Petition” with the New York State Board of Elections specifying the candidate’s desired district under the Final Maps. *Id.* The court also established a deadline of May 31, 2022 for candidates to file any such Certificate to use Prior Petition. *Id.* In addition, the Order provided an alternative ballot access mechanism for candidates who had *not* previously submitted a valid designating petition for the June 28, 2022 primary. *Id.* Such candidates are permitted to obtain ballot access for the August 23, 2022 primary under the Final Maps by collecting petition signatures and submitting designating petitions by new deadlines. *Id.*

### **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 U.S. House of Representatives from New York entitled to separate contribution limits for the court-ordered August 23, 2022 congressional primary?

## DISCUSSION

The Act establishes the contribution limits applicable to candidate committees. 52 U.S.C. § 30116(a)(1). These limits are set “with respect to any election for Federal office.” *Id.* An “election” includes “a general, special, primary, or runoff election,” 52 U.S.C. § 30101(1)(A), where an individual, “whether opposed or unopposed, seek[s] nomination for election, or election, to Federal office.” 11 C.F.R. § 100.2(a). The Commission “has previously noted that ‘the plain language of the Act and Commission regulations . . . on their face place no limit on the number of ‘elections’ eligible for separate contribution limits.’” Advisory Opinion 2016-03 (Holding), at 4 (quoting MUR 6438 (Art Robinson for Congress), Factual and Legal Analysis at 6-7 (Oct. 5, 2012)).

The Commission has determined that “a separate contribution limit *is* available when a judicial decision places candidates in a ‘new electoral situation,’ thereby creating a separate election.” Advisory Opinion 2016-03 (Holding), at 4 (emphasis added).<sup>2</sup> In Advisory Opinion 2016-03 (Holding), the Commission found that primary candidates in two North Carolina congressional districts faced a “new electoral situation” when redistricting litigation resulted in last-minute changes to the district boundaries, new ballot access requirements, and a new primary election date for two congressional districts. These “congressional candidates were required to file new candidacies in new congressional districts with new boundaries and prepare, plan, and campaign for a new election more than three months away and held under new rules.” *Id.*

The present situation faced by New York congressional candidates is materially indistinguishable from the facts in Advisory Opinion 2016-03 and requires separate contribution limits. Here, after congressional candidates had already declared their candidacies under the February 3 Maps, and after the ballot access deadlines for the June 28, 2022 primary election had passed, federal and state courts ordered that New York conduct its congressional primary election on a new date—August 23, 2022—using the new congressional district boundaries in the Final Maps. The Final Maps, which the Steuben County Supreme Court only recently adopted on May 20, 2022, alter the boundaries of *all* congressional districts in New York. New York congressional candidates who previously qualified for the June 28, 2022 primary ballot do not automatically qualify for the court-ordered August 23, 2022 congressional primary. Instead, these congressional candidates must file paperwork with the State Board of Elections to appear on the August 23, 2022 primary ballot. Notably, previously qualified congressional candidates may choose to run in *any* of the newly drawn congressional districts under the Final Maps. Moreover, the court-ordered August 23, 2022 congressional primary is not limited to candidates who previously qualified for the June 28, 2022 primary; the court provided a mechanism for new candidates to obtain ballot access for the August 23, 2022 congressional primary.

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<sup>2</sup> The present situation faced by New York congressional candidates is also materially similar to the facts in prior advisory opinions in which the Commission found candidates faced a “new electoral situation” and approved a separate contribution limit. *See* Advisory Opinion 2006-26 (Bonilla) (approving a separate contribution limit for a court-ordered special general election after the court nullified the primary election); Advisory Opinion 1996-37 (Brady) (same); Advisory Opinion 1996-36 (Frost, et al.) (same).

Put simply, New York congressional candidates face a “new electoral situation” for the court-ordered August 23, 2022 primary. They have been forced to essentially restart their campaigns for a new primary that is less than three months away. They must file new candidacies in new congressional districts with new boundaries and face new opponents.

### CONCLUSION

In light of the “new electoral situation” and changed political circumstances in New York, longstanding Commission precedent teaches that congressional candidates running in the state’s court-ordered August 23, 2022 primary are clearly entitled to separate contribution limits to finance their campaign activities for this new election. The date on which the court adopted the Final Maps (*i.e.*, May 20, 2022), which is when the “new electoral situation” was finalized and became effective, would be an appropriate and straight-forward first date for the additional set of contribution limits to apply.<sup>3</sup>

Sincerely,



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NRCC

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<sup>3</sup> The Commission has previously used the date of the court decision which created a new electoral situation to mark the beginning of a new election campaign period for contribution limit purposes. *See, e.g.*, Advisory Opinion 1996-36 (Frost, et al.) (“The effect of the court’s decision, therefore, was to create a new general election contest, beginning on August 6 and lasting until November 5; this created, in effect, a different election campaign period from the one that lasted from March 13 to August 5.”).