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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA DOCUMENT NO. 22-38-A**  
**AGENDA ITEM**  
**For meeting of August 11, 2022**  
**SUBMITTED LATE**

August 5, 2022

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *ALR for LJS*  
Acting General Counsel

Neven F. Stipanovic *ALR for NFS*  
Associate General Counsel

Amy Rothstein *ALR*  
Assistant General Counsel

Joanna Waldstreicher *JSW*  
Attorney

Subject: AO 2022-18 (Fleming et al.) - Draft A

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the Agenda by one or more Commissioners.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00pm (Eastern Time) on August 10, 2022.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>.

Attachment

1 ADVISORY OPINION 2022-18

2

3 Rachel L. Jacobs, Esq.  
4 Jonathan A. Peterson, Esq.  
5 Elias Law Group  
6 10 G Street NE, Suite 600  
7 Washington, DC 20002

**DRAFT A**

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10 Dear Ms. Jacobs and Mr. Peterson:

11 We are responding to the advisory opinion request that you submitted on behalf of  
12 Bridget Fleming for Congress, Jackie Gordon for Congress, Conole for Congress, and Max Rose  
13 for Congress (collectively, the “Committees”). The Committees ask whether they may seek to  
14 have contributions that were originally designated for New York’s November 2022 general  
15 election redesignated for New York’s August 23, 2022, primary election as long as the  
16 redesignations are received in writing before August 23, 2022, in light of the Commission’s  
17 conclusion in Advisory Opinion 2022-08 (National Republican Congressional Committee)  
18 (“NRCC”) that a separate contribution limit applies to the August 23, 2022, primary election.  
19 The Commission concludes that the Committees may seek such redesignations as proposed.

20 ***Background***

21 The facts presented in this advisory opinion are based on your advisory opinion request  
22 received on July 26, 2022 (“AOR”).

23 Bridget Fleming, Jackie Gordon, Francis Conole, and Max Rose are currently running for  
24 nomination in the August 23, 2022, Democratic primary for the U.S House of Representatives in  
25 New York. The Committees are their respective authorized principal campaign committees.  
26 The candidates were all candidates in the federal primary election in New York originally  
27 scheduled for June 28, 2022.

1           In late March 2022, a New York state trial court found that the congressional maps to be  
2 used in the June 28 election were unconstitutional. That decision was followed by a number of  
3 other judicial decisions in April and May 2022, culminating in the adoption of new congressional  
4 district maps and a new primary election scheduled in New York for August 23, 2022.<sup>1</sup>

5           On June 23, 2022, the Commission issued Advisory Opinion 2022-08 (NRCC). In that  
6 advisory opinion, the Commission concluded that the litigation had resulted in a “new electoral  
7 situation”<sup>2</sup> for congressional candidates in New York, such that candidates vying for their party’s  
8 nomination in the August 23, 2022, primary election were entitled to a contribution limit separate  
9 from the limit for candidates in the June 2022 primary election.

10 ***Question Presented***

11           *May the Committees receive redesignations of November 2022 general election*  
12 *contributions to the August primary election even if the redesignations are received more than*  
13 *60 days after the Committees’ receipt of the contributions, as long as the redesignations are*  
14 *received in writing prior to August 23, 2022?*

15 ***Legal Analysis***

16           Yes, the Committees may receive redesignations of November 2022 general election  
17 contributions to the August primary election as proposed, even if the redesignations are received  
18 more than 60 days after the Committees’ receipt of the contributions.

19           Under the Federal Election Campaign Act (the “Act”) and Commission regulations,  
20 candidates and their authorized committees are entitled to separate contribution limits with

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<sup>1</sup> Additional information about the events leading up to the scheduling of the August 23, 2022, primary election can be found in Advisory Opinion 2022-08 (NRCC).

<sup>2</sup> *Id.* at 5-6.

1 respect to “any election for Federal office.”<sup>3</sup> For the purposes of the Act and Commission  
2 regulations, an “election” includes “a general, special, primary, or runoff election,”<sup>4</sup> where an  
3 individual, “whether opposed or unopposed, seek[s] nomination for election, or election, to  
4 Federal office.”<sup>5</sup> A primary election is an election “held prior to a general election, as a direct  
5 result of which candidates are nominated, in accordance with applicable State law, for election to  
6 Federal office in a subsequent election.”<sup>6</sup> Because contribution limits “apply separately with  
7 respect to each election,”<sup>7</sup> “participating in multiple distinct elections can render a candidate  
8 eligible for separate contribution limits.”<sup>8</sup> As the Commission determined in Advisory Opinion  
9 2022-08 (NRCC), candidates in New York’s August 2022 primary election are entitled to  
10 contribution limits separate from the contribution limits for New York’s previously scheduled  
11 June 2022 primary election.<sup>9</sup>

12 Commission regulations provide that contributors may designate their contributions “for  
13 a particular election.”<sup>10</sup> A designated contribution must not cause the contributor to exceed the  
14 Act’s contribution limits with respect to the particular election for which the contribution has been  
15 designated. In addition, a political committee may accept contributions designated for an election

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<sup>3</sup> 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b).

<sup>4</sup> 52 U.S.C. § 30101(1)(A).

<sup>5</sup> 11 C.F.R. § 100.2(a).

<sup>6</sup> *Id.* § 100.2(c)(1).

<sup>7</sup> *Id.* § 110.1(j)(1).

<sup>8</sup> Advisory Opinion 2016-09 (Martins for Congress) at 3; Advisory Opinion 2016-03 (Holding for Congress) at 4.

<sup>9</sup> Advisory Opinion 2022-08 (NRCC) at 6.

<sup>10</sup> 11 C.F.R. § 110.1(b)(2)-(4).

1 that has already occurred only to the extent that such contributions do not exceed the committee’s net  
2 debts outstanding.<sup>11</sup>

3 Commission regulations also provide that the treasurer of an authorized committee may  
4 “request a written redesignation of a contribution by the contributor for a different election” in  
5 certain circumstances, such as when the contribution was designated for a particular election but  
6 received after that election, or when the contribution is excessive either on its face or when  
7 aggregated with other contributions from the same contributor.<sup>12</sup> A contribution is considered  
8 redesignated if the authorized committee requests a written redesignation and also informs the  
9 contributor of the contributor’s right to a refund of the contribution as an alternative to  
10 redesignating it, and the political committee receives the redesignation in writing within 60 days  
11 after receiving the original contribution.<sup>13</sup>

12 When the Commission promulgated these regulations, it explained that these procedures  
13 would allow political committees to “seek and obtain from contributors redesignations and  
14 reattributions of certain contributions that would otherwise be illegal.”<sup>14</sup> The Commission stated  
15 that the 60-day period would allow a committee treasurer to “examine the contribution for  
16 compliance with the contribution limits, make a written request for redesignation if necessary  
17 and receive the written redesignation from the contributor.”<sup>15</sup> The Commission also explained

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<sup>11</sup> *Id.* § 110.1(b)(1), (3)(i).

<sup>12</sup> *Id.* § 110.1(b)(3)(i), (b)(5)(i).

<sup>13</sup> *Id.* § 110.1(b)(5)(ii).

<sup>14</sup> Contribution and Expenditure Limitations and Prohibitions; Contributions by Persons and Multicandidate Political Committees, 52 Fed. Reg. 760 (Jan. 9, 1987).

<sup>15</sup> *Id.* at 763.

1 that the 60-day period “represents a balance between the need to establish a realistic deadline, on  
2 the one hand, and the need to resolve the problems created by excessive contributions as quickly  
3 as possible, on the other hand.”<sup>16</sup>

4 The Commission’s regulations on redesignation of impermissible contributions require  
5 that redesignations be received in writing within 60 days of the receipt of the contribution.<sup>17</sup> If  
6 the redesignation is not in writing or is not received within the required time frame, the  
7 contribution must be refunded.<sup>18</sup>

8 The Commission has made clear, however, that for contributions that are permissible  
9 when received and that become impermissible only later due to changes to the election or a  
10 candidate’s status, redesignations need not be obtained within 60 days of the committee’s receipt  
11 of the contribution. For example, in Advisory Opinion 1992-15 (Russo), the Commission  
12 concluded that a candidate who had lost a primary election could obtain the redesignation of  
13 general election contributions more than 60 days after receipt of the contributions, because “[i]t  
14 is not until the results of the primary election are announced that the treasurer has actual notice  
15 of the need to obtain redesignations.”<sup>19</sup> Similarly, in Advisory Opinion 2008-04 (Dodd for  
16 President), the Commission concluded that a candidate’s withdrawal from his race “caused the  
17 60-day period for obtaining redesignations and making refunds to commence to run.”<sup>20</sup> And, in  
18 Advisory Opinion 2009-15 (Bill White for Texas), the Commission reiterated that a political

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<sup>16</sup> *Id.*

<sup>17</sup> 11 C.F.R. § 110.1(b)(5)(ii)(A)(2).

<sup>18</sup> *Id.* § 103.3(b)(3).

<sup>19</sup> Advisory Opinion 1992-15 (Russo) at 2.

<sup>20</sup> Advisory Opinion 2008-04 (Dodd for President) at 4.

1 committee could obtain redesignations of contributions more than 60 days after the receipt of the  
2 contributions, due to a later event causing the committee to seek the redesignations.<sup>21</sup> The  
3 Commission further noted that, “[a]lthough Commission regulations only specifically address  
4 redesignation of excessive contributions, nothing in the Commission’s regulations is intended to  
5 suggest that political committees may not seek redesignation of contributions that are *within* the  
6 contribution limitations and restrictions.”<sup>22</sup> Thus, the Commission has consistently concluded  
7 that a political committee may receive redesignations of contributions more than 60 days after  
8 the committee’s receipt of the contributions, if there is a later event giving the committee notice  
9 of a reason to seek redesignation.

10 Here, the Committees propose to ask contributors to redesignate for the August 2022  
11 primary election contributions that were originally designated for the November 2022 general  
12 election. Under the facts here, the event giving rise to the Committees’ desire to seek the  
13 redesignations was the Commission’s June 23, 2022, Advisory Opinion 2022-08 (NRCC)  
14 concluding that congressional candidates in New York’s August 2022 primary are entitled to a  
15 separate contribution limit from the June 2022 primary. Prior to that advisory opinion, the  
16 Committees did not have “actual notice” as to whether and, if so, how much they could ask  
17 persons who had contributed to the June 2022 primary election to redesignate for the August  
18 2022 primary election.<sup>23</sup>

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<sup>21</sup> Advisory Opinion 2009-15 (Bill White for Texas) at 7.

<sup>22</sup> *Id.* at 6 n.7 (citing 11 C.F.R. § 110.1(b)(5)(i)(A)-(D)) (emphasis in original).

<sup>23</sup> Advisory Opinion 1992-15 (Russo) at 2.

1           Accordingly, the Commission concludes that the Committees may receive redesignations  
2 of November 2022 general election contributions to the August 2022 primary election as  
3 proposed, even if the redesignations are received more than 60 days after the Committees’  
4 original receipt of the contributions.<sup>24</sup> This conclusion is consistent with the Commission’s  
5 previous advisory opinions.

6           This response constitutes an advisory opinion concerning the application of the Act and  
7 Commission regulations to the specific transaction or activity set forth in your request.<sup>25</sup> The  
8 Commission emphasizes that, if there is a change in any of the facts or assumptions presented,  
9 and such facts or assumptions are material to a conclusion presented in this advisory opinion,  
10 then the requestors may not rely on that conclusion as support for their proposed activity. Any  
11 person involved in any specific transaction or activity which is indistinguishable in all its  
12 material aspects from the transaction or activity with respect to which this advisory opinion is  
13 rendered may rely on this advisory opinion.<sup>26</sup> Please note that the analysis or conclusions in this  
14 advisory opinion may be affected by subsequent developments in the law including, but not  
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<sup>24</sup>       The Committees did not ask, and the Commission does not determine, whether the 60-day deadline to receive redesignations of contributions that become illegal after receipt would apply here. Even if it did apply, however, the Commission notes that the Committees’ receipt of written redesignations “prior to August 23, 2022,” as proposed, would be within 60 days after the Commission issued Advisory Opinion 2022-08 (NRCC).

<sup>25</sup>       *See* 52 U.S.C. § 30108.

<sup>26</sup>       *See id.* § 30108(c)(1)(B).



1 limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited  
2 herein are available on the Commission's website.

3 On behalf of the Commission,

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Allen J. Dickerson  
Chairman