March 15, 2016

Adav Noti, Esq.
Acting Associate General Counsel for Policy
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request - Holding for Congress

Dear Mr. Noti:

The undersigned represent George Holding for Congress, Inc. (the "Holding campaign"). Pursuant to 52 U.S.C. § 30108(a) and 11 C.F.R. § 112.1, we respectfully request an advisory opinion confirming that the Holding campaign is entitled to a separate contribution limit for the primary election to be held in North Carolina on June 7, 2016 in accordance with 52 U.S.C. § 30101(1)(A) and 11 C.F.R. § 110.1(j).

I. Statement of Facts

Rep. George Holding (R-NC) currently represents the 13th Congressional District of North Carolina. On February 20, 2015, Rep. Holding filed a Statement of Candidacy with the Federal Election Commission ("FEC" or "the Commission") to run for re-election to represent the 13th Congressional District of North Carolina in 2016 and designated George Holding for Congress, Inc. as his principal campaign committee. George Holding for Congress filed a Statement of Organization with the Commission on the same date.

On September 30, 2015, the North Carolina General Assembly designated March 15, 2016 as the date for the 2016 primary election, including the primary for Republican and Democratic candidates for the U.S. House of Representatives (the "March 15th primary").[1] The March 15th primary began on January 25, 2016 when North Carolina county elections officials began distributing mail-in absentee ballots to civilian voters in North Carolina and military and overseas voters pursuant to the Uniformed and Overseas Citizens Absentee Voting Act.[2]

On February 5, 2016, however, a three-judge panel of the U.S. District Court for the Middle District of North Carolina found that the 1st and 12th Congressional Districts of North Carolina's 2011 Congressional Redistricting Plan violated the Equal Protection Clause of the Constitution and ordered the North Carolina legislature to enact a remedial congressional redistricting plan by February 19, 2016.[3]

[1] S.L. 2015-258, Special Session (N.C. 2015)
[2] Uniformed and Overseas Citizens Absentee Voting Act of 1986, 39 U.S.C. § 3406.
[3] Harris v. McCrory, Case No. 1:13-cv-949, 2016 WL 482052, at *2 (M.D. N.C. Feb. 5, 2016).

Because the March 15th primary was already underway, the State of North Carolina filed an emergency motion with the three-judge panel of the Middle District of North Carolina asking it to stay it's final order pending Supreme Court review.[4] Attached to the emergency motion was a declaration by Kim Westbrook Strach, Executive Director of the North Carolina State Board of Elections.[5] Ms. Strach declared that the March 15th primary was already well underway. County elections officials began issuing mail-in absentee ballots on January 25, 2016.[6] By February 7, 2016, county elections officials had already mailed 8,621 absentee ballots to voters. Seven thousand, eight hundred and forty-five of those absentee ballots included congressional races that could be affected by the three-judge panel's redistricting order. Most importantly, more than four hundred voted absentee ballots had already been returned as of February 7, 2016.[7]

In addition, Ms. Strach declared that "I believe there is no scenario under which ballots for the March Primary can be reprinted to remove the names of congressional candidates without compromising safeguards needed to ensure the administrative integrity of the election. Accordingly, congressional candidates will remain on ballots issued to voters via mail-in absentee, at early voting locations,[8] and on primary Election Day on March 15, 2016."[9]

The three-judge panel of the Middle District of North Carolina denied the State of North Carolina's emergency motion on February 9, 2016.[10] The State of North Carolina subsequently sought a stay of the Middle District's final order from the U.S. Supreme Court.[11]

Pending the outcome of the request to the Supreme Court for a stay, the North Carolina General Assembly held a two-day extra session on February 18-19, 2016 to draw new congressional maps that would comply with the Middle District's final order. On February 19, the North Carolina General Assembly adopted a remedial redistricting plan.[12] The remedial redistricting plan redrew North Carolina's congressional districts. The majority of the old 13th Congressional District is now in the new 2nd Congressional District. The new 2nd Congressional District contains 152 precincts. Most of the voters Congressman Holding has represented were moved into the 2nd District. Twelve percent of the precincts in the new 2nd Congressional District had previously been in the old 2nd Congressional District represented by Rep. Renee Ellmers (R-NC). The remaining twenty-eight percent of the precincts in the new 2nd Congressional District were drawn from other districts.

On March 15, 2016, Mr. Holding filed an amended Statement of Organization and a new Statement of Candidacy with the FEC changing the office he is seeking from the North Carolina 13th Congressional District to the 2nd. Mr. Holding has also withdrawn his candidacy for the

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[4] Harris v. McCrory, Case No. 13-cv-00949, Def.'s Emergency Motion to Stay Final Judgment and to Modify Injunction Pending Supreme Court Review (M.D. N.C. Feb. 8, 2016) ECF No. 145 ("Emergency Motion").
[5] Harris, Decl. of Kim Westbrook Strach, (M.D. N.C. Feb. 8, 2016) ECF No. 145-1.
[6] Id. at ¶ 14.
[7] Id. at ¶ 15.
[8] Early voting began on March 3, 2016. Id. at ¶ 13.
[9] Id. at ¶ 19.
[10] Harris, Order Denying Emergency Motion, (M.D. N.C. Feb. 9, 2016) ECF No. 148.
[11] Application For a Stay Pending Appeal, McCrory v. Harris, Case No. 15A809 (S.Ct. Feb. 10, 2016).
[12] S.L. 2016-1, Special Session (N.C. 2016).

13th Congressional District under North Carolina law and will become a candidate in the 2nd when the state's filing period opens.

The North Carolina General Assembly also adopted a separate piece of legislation on February 19, 2016 to revise the procedures for the conduct of the 2016 primary for congressional races in North Carolina.[13] House Bill 2 established a second primary for congressional races to be held on June 7, 2016.[14] Because the March 15th primary was already underway when the Middle District issued its redistricting order, House Bill 2 also provides that any ballot cast in the March 15th primary may not be certified by the North Carolina State Board of Elections.[15]

Significantly, House Bill 2 did not repeal State Law 2015-258 requiring the March 15th primary – it merely prohibits the State Board of Elections from certifying the results of the March 15th primary for congressional races unless certain conditions are met. House Bill 2 stipulates that it only applies to the 2016 election cycle, unless, prior to March 16, 2016, the Supreme Court reverses or stays the Middle District's decision on the constitutionality of the old congressional maps. If that were to happen, House Bill 2 would be repealed and the old congressional maps would apply.[16]

In essence, North Carolina law now calls for two congressional primaries in 2016. State Law 2015-258 requires that the congressional primary be held on March 15, 2016 along with all of the other primary elections, including the presidential preference primary, in North Carolina. Votes for congressional candidates, including Rep. George Holding, have already been cast in the March 15th primary. House Bill 2, however, stipulates that these votes may not be certified by the North Carolina State Board of Elections unless the Supreme Court stays or reverses the Middle District's decision by March 16, 2016. If the Supreme Court does not do that, there will be a second congressional primary on June 7, 2016.

Needless to say, the General Assembly's legislation allowing the March 15th primary to proceed while also creating a second primary on June 7, 2016 has caused considerable confusion among the electorate. After the General Assembly adopted House Bill 2 on February 19, 2016, Kim Westbrook Strach, Executive Director of the North Carolina State Board of Elections, issued the following statement:

> Every NC voter should be confident their voice will be heard in all primary contests. In each election, voters should mark their preferences in all contests – including candidates for U.S. House appearing on ballots in March. Vote the whole ballot and let us worry about what will count.[17]

Later that evening, the U.S. Supreme Court denied the State of North Carolina's request for a stay of the Middle District's final order.[18] On March 3, 2016, the plaintiffs in the redistricting

[13] S.L. 2016-2, Special Session (N.C. 2016) ("House Bill 2") (attached as Exhibit 1).
[14] House Bill 2, Section 1.(b).
[15] House Bill 2, Section 4.
[16] House Bill 2, Section 5.
[17] Press Release, N.C. State Bd. of Elections, Statement on the Passage of HB-2 (Feb. 19, 2016).
[18] McCrory v. Harris, __ S.Ct. __, 2016 WL 686480, at *1 (S.Ct. Feb. 19, 2016).

case filed with the three-judge panel of the Middle District objections to the remedial redistricting plan adopted by the General Assembly on February 19, 2016.[19]

The remedial redistricting plan has had a profound impact on the Holding campaign. By the time the North Carolina General Assembly enacted the remedial plan on February 19, 2016, the Holding campaign had already raised $873,431.65 and spent $708,100.68 for the March 15th primary, leaving the Holding campaign with $165,330.97 cash on hand to spend in the final three weeks leading up to Election Day. Rep. Holding is also now facing an entirely new and different primary race than the Holding campaign has spent the past year running. Rep. Holding was running unopposed in the Republican primary for the old 13th Congressional District.[20] Now Rep. Holding is running against another incumbent, Rep. Renee Elmers (R-NC), in the June 7, 2016 Republican primary for the new 2nd Congressional District.

II. Question Presented

May the Holding campaign raise additional contributions subject to a new contribution limit for the June 7, 2016, North Carolina Congressional primary?

III. Commission Precedent and Analysis

A. Advisory Opinion 1982-22 (Bartlett)

In Advisory Opinion 1982-22, the Commission declined to accord Congressman Steve Bartlett an additional primary contribution limit when, during his primary, he changed the congressional seat for which he was running. Mr. Bartlett's decision was prompted by the changes made to Texas' congressional district boundaries by order of a U.S. District Court pursuant to the Federal Voting Rights Act.[21]

The reasons for the Commission's denial of Mr. Bartlett's request are distinguishable from the present case because of our significantly different facts and, with all due respect, Advisory Opinion 1982-22 was wrongly decided.

On March 12, 1982, Steve Bartlett withdrew his candidacy for nomination from the 5th Congressional District in Texas and declared his candidacy for election to the United States House of Representatives for the 3rd Congressional District. In both his race for the 5th and then for the 3rd, Mr. Bartlett sought his party's nomination in Texas' regularly scheduled May 1, 1982 primary election. Despite the last-minute court order, the State of Texas did not have to change the date of the primary because it apparently had adequate time to re-print its ballots with the lines of the new district boundaries and show the new districts in which the candidates had chosen to run.

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[19] Plaintiff's Objections and Memorandum of Law Regarding Remedial Redistricting Plan, Harris v. McCrory, No. 1:13-cv-00949-WO-JEP (M.D. N.C. March 3, 2016) ECF No.157.

[20] Rep. Holding's lack of opposition in the March 15th Republican primary has no impact on the contribution limit for that election. "An election in which a candidate is unopposed is a separate election for the purposes of the limitations on contributions of this section." 11 C.F.R. §110.1(j)(2).

[21] See Seamon v. Upham, 536 F.Supp. 931 (E.D. Tex. 1982), vacated by, Upham v. Seamon, 456 U.S. 37 (1982).

Quite simply, Mr. Bartlett merely changed his candidacy from one district to another in the same election. Here, Mr. Holding is changing his candidacy from one district to another *and* from one election to another. Our distinguishing fact that there are two distinct, separate and sequential primary elections in North Carolina merits a different opinion by the Commission: Mr. Holding is entitled to a separate contribution limit for his upcoming second primary election.

The Federal Election Campaign Acts grants separate individual contribution limits to any candidate with respect to "any election for Federal office..." 52 U.S.C. § 30116(a)(1)(A). The Act defines "election" as "a general, special, primary, or runoff election;..." 52 U.S.C. § 30101. Easily for the Commission, the State of Texas established the primary election for federal candidates to be May 1, 1982 and then affirmed the May 1, 1982, primary election would still be held on that date even with the court's and candidates' last minute changes. Although its true Mr. Bartlett changed his "candidacy," the Act does not track "candidacies" for contribution limits; it tracks elections.[22] No additional election was declared in Texas so no additional FECA election occurred, so no additional contribution limit could be legally granted.

As described earlier, because the March 15th primary ballots were printed with the now-invalidated Congressional district lines, the State has decided to invalidate the Congressional primary election and design a new primary to be held for those candidates on June 7, 2016. This date change specifically and only applies to candidates running for the U.S. House - candidates for President, U.S. Senate and state offices will still be nominated in the March 15th primary. The state will continue to conduct the entire March 15, 2016 primary election, but will not count the votes cast for U.S. Congress in that election.

To remedy this situation, the State has scheduled a redesigned, stand-alone Congressional primary 84 days from today on June 7th. That remedial, or make-up primary election, supersedes all aspects of the March 15th Congressional primary. All congressional candidates in the March 15th primary have received a refund of their March ballot access filing fee and must re-file to run in the new primary election regardless of what district he or she may have been or are running in. The new primary changes the deadlines for voter registration, candidate eligibility and FEC reporting periods Entirely new campaign strategies for GOTV programs will have to be financed in an election where there are no other races on the ballot, and voters are presented with new candidates, some of which are now in contested primaries, with no opportunity for run-offs and a shorter time to campaign for the general election.

These distinctions are notable differences from 1982-22. Simply put, Texas had one primary election and North Carolina has two.

The Commission could have answered the question 1982-22 (and can make its decision here) by simply applying the definition of "election". Advisory Opinion 1988-22, however, continued to unnecessarily involve other provisions of the Act to bolster its legal conclusion. Its

[22] See for example, Advisory Opinion 1982-47 (Sullivan for Senate) where the Commission held that an individual simultaneously campaigning for three different political party nominations for the same federal office in a New York primary is not entitled to three separate contribution limits. ("it is clear...Mrs. Sullivan is not a candidate in more than one election.") Advisory Opinion 1982-47 at 2.

statutory interpretations and legal analyses are so wrong that the Commission should not only avoid repeating them here, the Commission should take this opportunity to specifically refute them.

Advisory Opinion 1982-22's extra analysis starts on the wrong page by noting both the Act and Commission regulations "specifically recognize that a single individual may be a candidate for election to more than one Federal office." Advisory Opinion 1982-22 at 2. This is sometimes referred to as the "simultaneously seeking" rule that accords separate contribution limits to an individual's separate campaigns for separate federal offices that are held in the same election year.[23]

The problem with this observation is that neither Mr. Bartlett nor Mr. Holding were, or are, simultaneously seeking election to more than one federal office. Mr. Bartlett was running in the Texas 5th, then withdrew his candidacy for that office, then filed a new Statement of Candidacy for the 3rd. Similarly, Mr. Holding was running in the 13th, then withdrew that candidacy, and then filed a new candidacy for the 2nd. There is nothing simultaneous in either case. Both candidacies are sequential.

The Commission continued down the wrong path by re-writing the question Mr. Bartlett asked:

> The question presented by your request is, therefore, whether two Congressional seats from the same State in the same election cycle constitute separate and different Federal offices for purposes of the Act's contribution limitations.
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> Advisory Opinion 1982-22 at 2.

Putting aside that the words "election cycle" are nowhere in the statute, the Commission introduced the word "different" into this new statutory test. The FECA does not use the word "different" in defining the federal offices for which separate contribution limits are accorded. Instead it uses words such as "to a Federal office" or "both such offices" or "apply separately with respect to each election." 52 U.S.C. § 30116(a)(5), (6).

The Commission presumably added the word "different" to the statute because, once it started down this wrong path, it needed a hurdle to deny Mr. Bartlett an additional contribution limit. The opinion's application of the word "different" proceeded in this way:

> The term "Federal office" is defined as "the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress." See 2 U.S.C. § 431(3); 11 CFR § 100.4. Thus, neither the Act nor the Commission's regulations identify Congressional seats as separate Federal offices.
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> Advisory Opinion 1982-22 at page 3.

[23] See, for example, Advisory Opinion 1995-03 (Gramm '96 Committee) where the Commission approved two separate contribution limits for Senator Gramm's concurrent campaigns for U.S. Senate in Texas and for President of the United States.

The Commission should have stopped there and wisely defaulted to this position: absent a clear indication in the statute that all of a state's congressional seats are the same federal office, the Commission will accord separate contribution limits for the separate elections in each of the separate congressional districts, regardless of who was running in them.[24] That conclusion would have been reinforced by FECA's legislative history,[25] and the long-standing constitutional requirement that states must apportion the number of Congressional seats they are allocated by *districts*, and may not require candidates to be elected in one at-large state-wide race.[26]

Unfortunately, the Advisory Opinion did just the opposite:

> [T]hose portions of the Constitution of the United States and Federal law which provide for the election of United States Representatives indicate that each Congressional seat within a State does not constitute a separate Federal office... [A]s the Supreme Court observed, "It has never been doubted that representatives in Congress thus chosen [by district] represented the entire people of the State acting in their sovereign capacity." McPherson v. Blacker, 146 U.S. 1, 26 (1892). Thus, the office of Representative of the United States is defined not by the geographical boundaries of the particular district which elects it but rather by the State which it represents.
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> Advisory Opinion 1982-22 at 3.

With all due respect to the FEC in 1982, this constitutional analysis is wrong. Putting aside why the FEC is even wandering into this area, there is absolutely no authority for the proposition that the U.S. Constitution and federal law indicate separate congressional seats do not constitute separate federal offices. In fact, the whole reason we are here today is because a U.S. District Court interpreted the Voting Rights Act to hold that North Carolina had violated the Equal Protection clause of the U.S. Constitution by impermissibly drawing individual

[24] The Commission did come to the right conclusion in MUR 6438 (Art Robinson for Congress) ("...[T]he plain language of the Act and Commission Regulations ... on their face place no limit on the number of "elections" eligible for separate contribution limits.") MUR 6438 Factual and Legal Analysis pp. 6-7.

[25] See footnote 4 in Advisory Opinion 1982-22: The legislative history and the Explanation and Justification of the Commission's regulations do not reflect that any consideration was given to whether separate Congressional seats are separate federal officers. See 122 Cong. Rec. H3777) daily ed. May 3, 1976) (remarks of Rep. Hays); H. Conf. Rept. No. 94-1057, 94th Cong., 2d Sess. At 58; see also Explanation and Justification for Part 110 of Regulations, 1 Fed. Elec. Camp. Fin. Guide (CCH) ¶864 at 1560-62. Rather, it appears that in drafting 2 U.S.C. § 441a(a)(5)(C), the conferees were primarily concerned with allowing the inter-committee transfer of funds by an individual who was running as a candidate for President and in the same year ran as a candidate for the House or the Senate. See House – Senate Conference Report to Accompany S.3065, Federal Election Campaign Act of 1976 (April 13, 1976) at 238-39 (remarks of Chairman Cannon).

[26] Section 2 of the Voting Rights Act enforces the Fifteenth Amendment to the Constitution by prohibiting redistricting plans or at-large multimember elections that prevent minority voters from casting sufficient votes to elect their preferred candidates. An at-large election can dilute the votes cast by minority voters by allowing a cohesive majority group to win every legislative seat in the jurisdiction. In the wake of the Voting Rights Act, Congress passed a law (PL 90-196) which prohibited at-large and other multi-member elections by states with more than one House seat for fear that some states might resort to winner-take-all at-large elections to dilute the voting strength of newly-enfranchised blacks in the South.

congressional *districts* so as to deny African Americans their right to fairly elect *a federal office holder* to represent their constituent interests.[27]

Worse, the Commission misread McPherson v. Blacker to finish its wrong analysis. McPherson involved the permissibility of a state legislature to apportion its presidential electors by congressional districts when, after the general election, that state casts its votes in the electoral college for President. The Court held that a state may apportion its electors by congressional district because "the combined result is the expression of the voice of the state... (and) that representatives in [C]ongress thus chosen represented the entire people of the state..." McPherson v. Blacker, 146 U.S. 1, 26 (1892).

The Supreme Court's decision in McPherson makes sense when it is properly read: the "combined" congressional districts total the "representatives" [note plural] of the entire state -- not that each U.S. Representative somehow represents the entire state. Putting aside why a campaign finance agency was using a 100 year old Supreme Court decision on the Electoral College in the first place, it should have at least used it correctly. Namely, all of a state's congressional districts elect separate congressmen who each hold a federal office which, when combined, represent the entire state in the U.S. House of Representatives.[28]

Accordingly, the facts and result in Advisory Opinion 1982-22 should not guide the Commission in its decision today and, for good measure, its analysis should be overturned as precedential rationale.

B. Advisory Opinion 1996-36 (Five Texas Congressmen)

In Advisory Opinion 1996-36, five Texas Congressmen presented facts which more closely resemble our request, and the Commission rendered an opinion there similar to what Mr. Holding contends should be the proper result here.

In 1996, the State of Texas held its Congressional primary on March 12th. Later, on August 6th, a U.S. District Court ordered the State to re-draw the boundaries of 13 of its Congressional districts after determining they were the product of an illegal racial gerrymander. Vera v. Bush, 933 F.Supp. 1341 (S.D. Tex. 1996). To comply with the order, the state voided the March 12 primary elections in the illegally drawn districts and ordered a new special election be held in November using newly drawn districts. A run-off election was also scheduled in December for any election in which a congressional candidate did not receive a majority of the votes cast in his or her new district. Among other questions, the five Texas Congressmen asked how many contribution limits they had, or had already used, for the elections they faced in 1996.

Unlike the Congressmen in 1996-36, Mr. Holding is not suggesting the contributions he received for his now-voided March 15th primary should no longer legally count as

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[27] Harris v. McCrory, Case No. 1:13-cv-949, 2016 WL 482052, at *2 (M.D. N.C. Feb. 5, 2016).

[28] Compare Advisory Opinion 1978-19, in which the Commission properly concluded that two Senate seats from the same State were different offices. Pursuant to the Constitution of the United States, art. I, §3, cl. 2, all Senate seats are divided into three classes of staggered six year terms and the U.S. Senate is the body of Congress with individual members who are elected state-wide to represent an entire state. See U.S. Const. amend. XVII.

"contributions" under the Act because no certified primary election had occurred.[29] Instead, Mr. Holding is advocating that his March election had its own contribution limit, his upcoming June primary should have its own contribution limit, and the November general election has its own contribution limit.

Consistent with our view, the Commission accorded the requestors in Advisory Opinion 1996-36 an additional contribution limit by distinguishing their facts from Advisory Opinion 1982-22 (Bartlett) and noting that separate, sequential elections were being held:

> The 1982 situation did not entail a new, court-ordered election, and the candidate still ran for the same office in the same, regularly scheduled primary election held under Texas law. He was in the same electoral position that he was in before the court's decision since no primary election had been held before he changed the district of his candidate filing. Here, the *Vera* court decision has nullified the results of prior elections in which each requester has participated as a candidate and has ordered the holding of a new, *special* general election in November as a remedy.
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> Advisory Opinion 1996-36 at 3.

In applying FECA contribution limits to the 1996 Texas case the Commission reasoned:

> From March 13, each requesting candidate was running in a general election for Federal office as their party's nominee. After August 5, therefore, each candidate was placed in a new electoral situation, created by the district court, whereby he or she was no longer the party's nominee, but was instead a candidate in an election that could involve other candidates of the same party. 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.
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> Id.

Simply, the Commission used the definition of "election" to decide the case. It concluded that an extra election was occurring by court order - so general election contributions made before the August court order would not have to be aggregated with new contributions for the special election in November. The Commission then noted if any post-special-general-runoff election had to occur in December, then a separate contribution limit would be accorded to that election as well.

The Commission should follow the logic and rationale of Advisory Opinion 1996-36 in rendering an opinion here: when a primary election is scheduled, and its legal effect is voided, and a new primary or general or special election (whatever it may be called) is declared to

[29] The Texas Congressmen presumably believed that voiding their earlier primary contributions would "free up" that previous limit for use in a future election. The Commission correctly rejected that suggestion by ruling that even though the Texas 1996 March primary had no legal effect, it still constituted an "election" for purposes of the Act such that any contributions to candidates in that election still counted as "contributions" subject to the primary election limit. Advisory Opinion 1996-35 at 3.

compensate for that invalidation, then an additional contribution limit is allowed for that additional election.[30]

IV. Conclusion

The North Carolina June 7, 2016 Congressional primary is clearly a separate election under 52 U.S.C. § 30101(1)(A) and 11 C.F.R. § 110.1(j) and, accordingly, the Commission should determine that Rep. Holding is entitled to a separate contribution limit for that election. The FECA definition of election is straight forward and neither the Act nor Commission regulations place a limit on the number of pre-general elections for which candidates may receive contributions. As written above, the Commission has a long history of Advisory Opinions and enforcement matters permitting candidates to receive more than one contribution limit for their party's nomination process and that whether a particular event is an election is based on an analysis of relevant state law.[31] Accordingly, Mr. Holding requests the Commission quickly apply its precedent to this question to accord a contribution limit to the upcoming North Carolina June 7, 2016 primary election.

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[30] The fact that the 1996 primary election in Texas was voided after it occurred versus here where the primary was voided just before it could occur is of no legal difference: it is the state's creation of a new election – however that may have been triggered – which creates a new contribution limit.

[31] Factual and Legal Analysis in MUR 6438 (Art Robinson for Congress), dated October 5, 2012, at 5-7 (citing Advisory Opinion 2004-20 (Farrell for Congress), Advisory Opinion 1978-30 (Firmage for Congress) and Advisory Opinion 1976-58 (Peterson for Congress)).

EXHIBIT 1

GENERAL ASSEMBLY OF NORTH CAROLINA
EXTRA SESSION 2016

SESSION LAW 2016-2
HOUSE BILL 2

AN ACT TO REVISE PROCEDURES FOR THE CONDUCT OF THE 2016 PRIMARY ELECTION TO COMPLY WITH THE COURT ORDER IN HARRIS V. MCCRORY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Conduct of 2016 U.S. House of Representatives Primary Election. – Notwithstanding Section 2 of S.L. 2015-258, the 2016 U.S. House of Representatives primary election shall be conducted as provided in this act.

SECTION 1.(b) U.S. House of Representatives Primary Election Date. – Notwithstanding G.S. 163-1(b), the 2016 U.S. House of Representatives primary election shall be held on Tuesday, June 7, 2016.

SECTION 1.(c) Filing Period for the U.S. House of Representatives Primary Election. – Notwithstanding G.S. 163-106 and Section 2 of S.L. 2015-258, the filing period for the 2016 U.S. House of Representatives primary shall open at 12:00 noon on Wednesday, March 16, 2016, and close at 12:00 noon on Friday, March 25, 2016.

SECTION 1.(d) Eligibility to File. – Notwithstanding G.S. 163-106, no person shall be permitted to file as a candidate in the 2016 U.S. House of Representatives primary unless that person has been affiliated with that party for at least 75 days as of the date of that person filing such notice of candidacy. A person registered as "Unaffiliated" shall be ineligible to file as a candidate in a party primary election.

SECTION 1.(e) No Run for Two Separate Offices at the Same Time. – A candidate who is certified as the winner of a primary election on March 15 and certified as the winner of a primary election on June 7 shall withdraw the notice of candidacy for one of those races no later than one week after the certification of both primary election results in order to comply with G.S. 163-124.

SECTION 1.(f) Return of Filing Fee. – Any candidate who has filed notice of candidacy for the office of 2016 U.S. House of Representatives prior to enactment of this act shall be entitled to return of that candidate's filing fee.

SECTION 2.(a) No Second Primary. – Notwithstanding G.S. 163-111, the results of all 2016 primary elections shall be determined by a plurality, and no second primaries shall be held during the 2016 election cycle.

SECTION 2.(b) Section 2(d) of S.L. 2015-258 is repealed.

SECTION 2.(c) Any election authorized by statute that is set for the date of the second primary shall be placed on the ballot at the time of the U.S. House of Representatives primary election, as established by subsection (b) of Section 1 of this act.

SECTION 3.(a) Temporary Orders. – In order to accommodate the scheduling of the 2016 U.S. House of Representatives primary, the State Board of Elections may issue temporary orders that may change, modify, delete, amend, or add to any statute contained in Chapter 163 of the General Statutes, any rules contained in Title 8 of the North Carolina Administrative Code, or any other election regulation or guideline that may affect the 2016 U.S. House of Representatives primary elections. These temporary orders shall only be effective for the 2016 U.S. House of Representatives primary elections.

SECTION 3.(b) Orders, Not Rules. – Orders issued under this act are not rules subject to the provisions of Chapter 150B of the General Statutes. Orders issued under this act shall be published in the North Carolina Register upon issuance.

SECTION 3.(c) Expiration of Orders. – Any orders issued under this act become void 10 days after the final certification of all 2016 U.S. House of Representatives primary elections.

This act expires 10 days after the final certification of all 2016 U.S. House of Representatives primary elections.

SECTION 3.(d) Definition. – As used in this act, "order" also includes guidelines and directives.

SECTION 4. Any ballots cast in accordance with S.L. 2015-258 for the 2016 U.S. House of Representatives primary races only shall not be certified by the State Board of Elections, are confidential, and are not a public record under G.S. 132-1.

SECTION 5. This act is effective when it becomes law and applies to the 2016 election cycle unless, prior to March 16, 2016, the United States Supreme Court reverses or stays the decision of the United States District Court for the Middle District of North Carolina holding unconstitutional G.S. 163-201(a) as it existed prior to the enactment of this act (or the decision is otherwise enjoined, made inoperable, or ineffective), and in any such case, this act is repealed.

In the General Assembly read three times and ratified this the 19th day of February, 2016.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 8:30 a.m. this 23rd day of February, 2016