

The Board solicited comments.

Responses follow.

NEW YORKERS FOR FERRER

April 1, 2005

Ms. Sue Ellen Dodell
NYC Campaign Finance Board
40 Rector Street
New York, New York 10006


Dear Ms. Dodell:

In order to foster a fair and competitive campaign in the general election against an opponent who is not participating in the voluntary Campaign Finance Program and is not limited to a spending cap, New Yorkers for Ferrer, ("the Committee") requests that the NYC Campaign Finance Board ("the Board") consider and adopt the request in a letter dated February 23, 2005, and submitted by the "Miller for New York" campaign regarding general election expenditures made prior to September 14, 2005.

The Committee strongly believes that every candidate currently seeking the Democratic Party's nomination for NYC Mayor should be able to prepare financially for a general election against a candidate who has publicly stated that he will spend at least \$100 million. Committees voluntarily participating in the Campaign Finance Board Program should not be forced to raise money for the general election with the use of primary funds, including public funds designated for the use in the primary election. Instead, committees that have reached the maximum spending limit for the primary election should be permitted to allocate expenses incurred in raising funds for the general election to the general election, even if incurred during the primary.

Thank you for your consideration.

Sincerely,


Michael Stolper
Treasurer

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April 11, 2005

BY HAND

New York City Campaign Finance Board
40 Rector Street
New York, NY 10006

Dear Chairman Schwarz and Members of the Board:

I write on behalf of Anthony Weiner for New York, Congressman Anthony Weiner's prospective principal committee for his 2005 Mayoral campaign (the "Committee"). This letter sets forth the Committee's comments on the request by Gifford Miller for New York, dated February 23, 2005 (the "Miller Proposal"), for the CFB to issue an Advisory Opinion permitting Democratic primary candidates to allocate pre-primary expenditures in connection with general election fundraising to their general election campaigns, reversing the presumption established by § 3-706(1)(a) of the Campaign Finance Act and Rule 1-08(c)(1). The Committee takes no position at this time on the general legal issue of whether, under appropriate circumstances, pre-primary expenditures for general election fundraising could rebut the presumption and be excluded from the primary spending cap. The Committee is concerned, however, by certain aspects of the Miller Proposal which it wishes to bring to the Board's attention and which warrant denial of the Miller Proposal at this time.

By way of background, while the Miller Proposal purports to be made "for the principal committee of every candidate who decides to run for the Democratic Party's nomination for mayor," it was in fact filed only on behalf of Speaker Miller's campaign which did not reach out to other candidates or request that they join in the application. It goes without saying that any potential candidate aiming to run a general election campaign against a nonparticipating incumbent who has already substantially exceeded the spending cap is concerned about the inequity that will occur in this year's general campaign and the further erosion of this City's model reformed campaign finance system that will result. Congressman Weiner, who is running a community-based campaign without access to the type of City Hall incumbent fundraising about which the CFB has expressed concern or personal wealth, has certainly made his views on this subject well known. The Miller Proposal, however, really has nothing to do with the

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disadvantage that the Democratic nominee will face in the Fall. Rather, in reality, the Miller Proposal addresses only primary election spending cap issues.

Under well-established CFB procedures, any Democratic candidate is now free to engage in general election fundraising or to set aside monies for use only in a general election campaign. No new CFB action is required to authorize such steps. Instead, what Speaker Miller's campaign seeks is a ruling that its current fundraising expenditures be excluded from the primary spending cap, presumably so that it may spend additional funds on primary election voter contact and persuasion operations. The Miller Proposal has been made even before any campaign has sought authorization to engage in fundraising for a runoff primary. To the Committee's knowledge, this issue was not addressed when the City Council recently twice amended the Campaign Finance Act effective during this current election cycle.

The Miller Proposal does not appropriately safeguard against potential abuses of the requested ruling, and indeed, would create loopholes that could be exploited to eviscerate the spending cap in the primary. For instance, the Miller Proposal includes authorization to charge "fundraising materials" printed and used prior to the primary to a general election fund. The CFB cannot be put in the position of having to determine whether a particular flyer or mailing is truly a general election fundraising solicitation or, rather, a primary election voter persuasion piece in the guise of general election fundraising. We see no limitation in the Miller Proposal that would, for instance, prevent campaigns from mailing a flyer to every registered Democrat in New York City during the days before the primary election, touting their candidate, including a solicitation "expressly stating that the funds are for use in the general election" and excluding the costs of that mailing from the primary spending cap, even though the intent and the purpose would be to influence the primary election. We do not believe that the CFB should be in the position to police such activities or that it can effectively do so, and we are therefore concerned that the Miller Proposal may have the effect of further weakening the limits of the campaign finance system for the primary election in the guise of rescuing it from a big spending nonparticipating general election candidate.

Moreover, the allocation of expenditures as between campaign functions has proven always to be a murky issue, witness the radically different allocations made by candidates during this and other election cycles of personnel and facilities expenditures as exempt or nonexempt. It has from time-to-time been the case that certain campaigns have pushed the envelope by claiming that a relatively high portion of their personnel and facilities expenditures are attributed to compliance and are therefore exempt from the spending cap. The Miller Proposal might have the effect of opening a new, similar compliance problem by requiring the CFB to assess the credence of claims that people, facilities, literature and other expenditures are being devoted not to primary election activities but to general election fundraising instead. As currently presented, the Miller Proposal appears to include too big of a grey area, without appropriate compliance standards, that might well result in substantial harm to the fair and equitable campaign finance

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New York City Campaign Finance Board

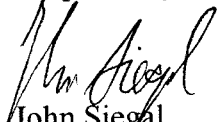
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system during the primary campaign. It would be a sad irony indeed if the degradation of the campaign finance system that will result again this year during the general election were to be invoked as a reason for inadvertently causing similar erosion to the system during the primary campaign.

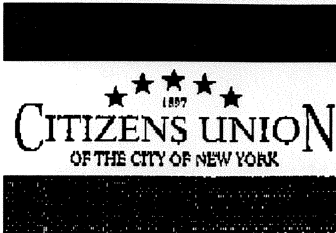
For these reasons, the Committee respectfully requests that the CFB deny the Miller Proposal at this time, without prejudice to the issue of whether or not at other times, under other circumstances and with appropriate safeguards, the presumption imposed by § 3-706(1)(c) and Rule 1-08(c)(1) could be reversed with respect to general election fundraising activities prior to a primary election.

Respectfully submitted,



John Siegal

cc: Nicole Gordon, Esq.
Sue Ellen Dodell, Esq.
Congressman Anthony Weiner
Anthony Weiner for New York



April 12, 2005

Sue Ellen Dodell
General Counsel
New York City Campaign Finance Board
40 Rector Street
New York, NY 10006

Dear Ms. Dodell:

In regards to the *Gifford Miller for New York* request of confirmation that the primary election expenditure limit does not apply to expenditures made before the primary from a general election committee for purposes of general election fundraising, Citizens Union supports a very narrow definition and application of this principle and calls on the Campaign Finance Board to draft rules in this regard.

Upon review of the request, allowing a candidate to spend limited and well-defined funds for fundraising purposes before the primary election so as not to put them at a competitive disadvantage should they advance to the general election appears to be in the spirit and intent of the campaign finance program. However, permitting this in the manner proposed may give candidates an inadvertent competitive advantage over other primary opponents. This potential consequence is an area of serious concern.

Citizens Union would not oppose a ruling allowing all participating candidates who are facing a self-financed, non-participating candidate from spending general election funds for general election fundraising purposes before the primary has taken place, so long as these funds meet stringent requirements above and beyond those laid out in the *Gifford Miller for New York* request letter.

Specifically, any application of this principle should require that no participating candidate be allowed to use these funds before the primary election for public purposes that could conceivably help increase public exposure and name recognition of the candidate. For instance, while allowing a candidate to spend funds to produce fundraising materials and make payments for general election fundraising events would fall under the spirit and intent of the law, allowing candidates to distribute these materials and announce these events before the primary would undoubtedly advance their primary election candidacy and give them a competitive advantage over their primary opponent.

We appreciate the efforts of *Gifford Miller for New York* to clarify this point and we advise the Campaign Finance Board of the need to specifically enumerate the intent of the law in this respect.

Sincerely,

A handwritten signature in black ink that reads 'Douglas Israel'.

Douglas Israel
Advocacy Director

cc: Gifford Miller for New York