1 1 2 Noted 2:16 p.m.) 3 CHAIRMAN SCHWARZ: All right, 4 if we could come to order. 5 We've got a few things to do. б I'm going to start with the 7 response, an oral response to the request for an advisory opinion we got from the Miller For New 8 9 York Committee. But this is oral and there will be a writing to follow. 10 Then we'll deal with some 11 12 penalty matters; we may have some other -- and we 13 will have some other announcements. 14 So the Board has reached a consensus in response to the Miller Campaign's 15 16 request as follows: First thing to say is that 17 18 the law leaves very little room for attributing expenses that occur during the Primary season to 19 20 anything other than the Primary. But based on a 21 advisory opinion or a ruling rather of the Board 22 several years ago, there is a little bit of room. 23 But one has to keep in mind 24 in considering the opinion that it's -- there's 25 not much room under the law to act, but there's

2 some room. 3 The second thing to say 4 that's guidance in thinking about the matter is 5 that the recent legislative history is relevant б in that, in the bill that was passed recently, 7 the City Council did address the question of what the consequences are of a person not in the 8 9 program spending lots of money because they're financing their own campaign. And when they're 10 financing their own campaign, they have a right 11 12 to spend whatever they want to. 13 And that was addressed by the 14 City Council in the recent legislation. 15 And again, the fact that the subject has been dealt with in the recent 16 17 legislation is - maybe I'll put in a cautionary note to us - a restraining note to us in the same 18 way as the law is. And that can be elaborated 19 20 further, but I think that's a fair way of putting 21 it. 22 Then turning to policy, there 23 are important policy interests that one has to 24 have in mind in thinking about a question like, 25 questions like those raised in the request from

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2 the Miller Campaign. 3 And there really are two: 4 One is, one has to be 5 extraordinarily careful in analyzing a request б like this not to do something that will unlevel 7 the playing field in the Primary itself. 8 And the second is, one has to 9 be careful in considering a request like this, that one doesn't do something that's vague, that 10 gives rise to significant enforcement problems 11 12 down the road. 13 So all three of those points 14 are points that go toward caution. 15 But as I said, there are some 16 things which the Board believes can be 17 appropriately done without running afoul of those 18 three things. 19 I should say first, and 20 another point of -- another important point for 21 people to have in mind - people who are not 22 experts - to have in mind is that during the 23 Primary Campaign under current law, without any 24 question, people can continue to raise money even 25 though they may have raised the maximum amount

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that could be spent in the Primary. And indeed 2 3 they can send out solicitation letters seeking 4 money that would be used in the general election. 5 The question that's before us 6 is whether there are any things that can be done 7 that are expenditures during the Primary season 8 that would not count against the Primary spending 9 limit. 10 And we have thought about

that and believe there are some kinds of things 11 that can be done that are okay under the law, 12 under the little tiny room that there is under 13 14 the law and don't run up against the principals that I mentioned about avoiding things that 15 unlevel the playing field in the primary or 16 17 create enforcement or interpretation problems. 18 To generalize about them, you 19 could say the -- a way to generalize about them 20 is that there are things that help someone during 21 the primary period to get ready to - my metaphor, 22 and I'm sure probably we won't use this in the 23 opinion - but "it's to hit the ground running" if they are fortunate enough to be the winner in 24 25 the Primary.

1 2 For these could range from 3 preparing literature to preparing buttons, to 4 some quite significant things like preparing 5 television, you know, advertisements that could б be used if the person won the Primary Election 7 right after the election. And if those were done in a 8 9 way that they're just put in in effect, put in 10 the bank, that we thought that those could be done without coming up against either the legal 11 12 restraints or the policy restraints. 13 There may be other things 14 that one could do; you could hire someone who would help you on that television, hypothetical 15 television advertisement. 16 17 Now, I'm about to come to a 18 concluding paragraph. Well, maybe I'll do the 19 concluding paragraph first. Which is, having said those 20 21 things -- oh, and there's one other thing that we 22 concluded would be fair and appropriate. 23 Which is that A, a candidate 24 in the Primary could use direct mail and direct 25 mail only, to contact people who have already

1 contributed to that person's campaign. And only 2 3 people who have already contributed to that 4 person's campaign and ask them to give new money 5 that would be put into a, in affect, a locked box 6 for potential use in a general election. 7 It might be that when we 8 write our opinion, we would say something more 9 about the circumstances and restraints that would 10 be placed on that generality, but that is a generality of something that we thought would be 11 12 appropriate. Having said all those things, 13 14 let me conclude by saying there may be circumstances in which campaigns can show that 15 the time of an individual -- of individual 16 17 personnel or consultants, or other items, yield 18 benefits exclusively for the general election and should be attributed to the general election 19 20 expenditure limit. 21 These kinds of expenditures 22 cannot be made unless pre-approved by the Board, 23 that would be by an application in which someone came in and asked for approval, and supported by 24 25 detailed documentation in a manner to be

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7 1 2 determined on a case-by-case basis. 3 Approval would be granted 4 only to the extent that it does not compromise 5 the law or policy concerns outlined above. б Now, an opinion will follow 7 that will be consistent with those general 8 sentiments. 9 So my having, I hope, 10 accurately expressed the consensus that the Board reached, I would just like to ask my colleagues 11 12 if there's something I left out or something they want to add or something that they want to 13 14 correct? MR. CHRISTENSEN: I think 15 that's correct and it does reflect the consensus 16 17 of the Board Members. 18 MR. RECHTSCHAFFEN: I just would like to comment that, I would like to thank 19 20 Fritz for his leadership in reaching this consensus of the Board. And because I know it 21 22 took a lot of work and a lot of effort went into 23 it. 24 So I would like to thank him 25 and the fellow Board Members who shared in this

1 regard. 2 3 CHAIRMAN SCHWARZ: And let me 4 say in response to that: 5 These are difficult issues б and I think one of the things that pleases me is 7 that we struggled with these difficult issues and yet we arrived at a consensus among the four of 8 9 us who were here today. And I appreciate how hard everybody worked on that. 10 11 Kitty, do you have anything? 12 MS. PATTERSON: No, I think 13 everything is accurately reflected in my view. 14 CHAIRMAN SCHWARZ: Okay. So 15 should we -- I think we need to take a vote that 16 accepts that as the consensus of the Board, the statement that I made, understanding there's an 17 18 opinion to follow. 19 MR. CHRISTENSEN: So moved. 20 MS. PATTERSON: Second. CHAIRMAN SCHWARZ: All in 21 22 favor? (Chorus of "ayes.") 23 24 CHAIRMAN SCHWARZ: Okay. So 25 that does that.

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