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Noted 2:16 p.m.)

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CHAIRMAN SCHWARZ: All right,  
if we could come to order.

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We've got a few things to do.

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I'm going to start with the  
response, an oral response to the request for an  
advisory opinion we got from the Miller For New  
York Committee. But this is oral and there will  
be a writing to follow.

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Then we'll deal with some  
penalty matters; we may have some other -- and we  
will have some other announcements.

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So the Board has reached a  
consensus in response to the Miller Campaign's  
request as follows:

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First thing to say is that  
the law leaves very little room for attributing  
expenses that occur during the Primary season to  
anything other than the Primary. But based on a  
advisory opinion or a ruling rather of the Board  
several years ago, there is a little bit of room.

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But one has to keep in mind  
in considering the opinion that it's -- there's  
not much room under the law to act, but there's

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2 some room.

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The second thing to say  
4 that's guidance in thinking about the matter is  
5 that the recent legislative history is relevant  
6 in that, in the bill that was passed recently,  
7 the City Council did address the question of what  
8 the consequences are of a person not in the  
9 program spending lots of money because they're  
10 financing their own campaign. And when they're  
11 financing their own campaign, they have a right  
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  
16 subject has been dealt with in the recent  
17 legislation is - maybe I'll put in a cautionary  
18 note to us - a restraining note to us in the same  
19 way as the law is. And that can be elaborated  
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  
6 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,  
10 that one doesn't do something that's vague, that  
11 gives rise to significant enforcement problems  
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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2 that could be spent in the Primary. And indeed  
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  
11 that and believe there are some kinds of things  
12 that can be done that are okay under the law,  
13 under the little tiny room that there is under  
14 the law and don't run up against the principals  
15 that I mentioned about avoiding things that  
16 unlevel the playing field in the primary or  
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"  
24 if they are fortunate enough to be the winner in  
25 the Primary.



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2 contributed to that person's campaign. And only  
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  
11 generality of something that we thought would be  
12 appropriate.

13                                 Having said all those things,  
14 let me conclude by saying there may be  
15 circumstances in which campaigns can show that  
16 the time of an individual -- of individual  
17 personnel or consultants, or other items, yield  
18 benefits exclusively for the general election and  
19 should be attributed to the general election  
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  
24 came in and asked for approval, and supported by  
25 detailed documentation in a manner to be



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2 regard.

3 CHAIRMAN SCHWARZ: And let me  
4 say in response to that:

5 These are difficult issues  
6 and I think one of the things that pleases me is  
7 that we struggled with these difficult issues and  
8 yet we arrived at a consensus among the four of  
9 us who were here today. And I appreciate how  
10 hard everybody worked on that.

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  
17 statement that I made, understanding there's an  
18 opinion to follow.

19 MR. CHRISTENSEN: So moved.

20 MS. PATTERSON: Second.

21 CHAIRMAN SCHWARZ: All in  
22 favor?

23 (Chorus of "ayes.")

24 CHAIRMAN SCHWARZ: Okay. So  
25 that does that.



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(Time noted 2:26 p.m.)

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