

SQUADRON FOR NEW YORK

CHURCH STREET STATION – P.O. BOX 46 – NEW YORK, NY 10008

August 13, 2013

VIA ELECTRONIC MAIL AND U.S. MAIL

Amy M. Loprest
Executive Director
New York City Campaign Finance Board
40 Rector Street
New York, NY 10006

Re: Advisory Opinion Request Pursuant to CFB Rule 1-04(q)

Dear Ms. Loprest,

This letter is written on behalf of Squadron for New York, Daniel Squadron's campaign committee for Public Advocate (the "Committee"). The Committee seeks a Campaign Finance Board determination that it is now reasonable to anticipate a runoff primary election for the Democratic Party nomination for the office of Public Advocate of the City of New York. Our understanding is that such a determination will allow all candidates seeking the Democratic Party nomination to solicit and accept additional contributions for the anticipated runoff primary election in accordance with the requirements of CFB Rule 1-04(q).

In support of the Board determination we seek, we note the following facts:

- (1) The incumbent public advocate is not seeking re-election. Runoff primaries have been held in the two most recent prior instances in which there was no incumbent seeking reelection for the position of public advocate (2001 and 2009). Such recent history supports a finding that a runoff is reasonably anticipated this year. See generally Advisory Opinions Nos. 1999-1; 2009-5 (July 16, 2009); 2009-6 (Aug. 6, 2009) for consideration of "[a] history of runoff primaries in a particular party for the office at issue" as a factor in determining whether a runoff primary is reasonably anticipated.

In fact, the only instance in which there was no runoff despite the lack of an incumbent was in 1993, the first time an election was held for the office of public advocate. However, the fact that the 1993 Democratic Party primary did not result in a runoff does not undermine the case for reasonable anticipation at this point in time, since the CFB standard does not require predictive certainty. See CFB Advisory Opinions Nos. 2001-10 (Aug. 23, 2001) (CFB determination that runoff primary for public advocate was reasonably anticipated despite lack of runoff in 1993 Democratic Party primary); 2009-5 (same).

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- (2) Four or more candidates will likely be on the primary election ballot. As of disclosure statement ten (Aug. 9, 2013), three of the declared candidates for public advocate seeking the Democratic Party nomination have each raised in excess of \$1.4 million, including public matching funds. One other declared Democratic Party candidate has raised more than \$250,000. Thus, at least four candidates have the means to vigorously contest the nomination until the primary election is held in just four weeks from this submission, and it is reasonable to anticipate that none will receive the 40 percent or more of the votes cast needed to avoid a runoff primary. See CFB Advisory Opinions Nos. 2001-10 (runoff primary for public advocate reasonably anticipated after two candidates had raised more than \$1 million and two other candidates had raised more than \$200,000); 2009-5 (runoff primary for public advocate reasonably anticipated after two candidates had raised more than \$1 million each and two others had raised “lesser . . . but still significant funds”); see generally CFB Advisory Opinions 2001-1 (Mar. 13, 2001); 2001-3 (May 17, 2001); 2005-2 (July 7, 2005); 2008-5 (July 10, 2008); 2009-6.
- (3) Public opinion poll indicates the likelihood that no candidate will receive 40 percent or more of the votes cast in the Democratic primary election for public advocate. A publicly released poll conducted by The Wall Street Journal / NBC 4 New York / Marist showed that no candidate had more than 17 percent support among Democrats. According to Marist, the race remains “very fluid,” with only 34% of respondents strongly supporting their candidate and 54% undecided. [WSJ/NBC 4/Marist Poll, June 26, 2013, <http://maristpoll.marist.edu/626-weiner-surpasses-quinn-among-nyc-demslhota-tops-gop-field-in-quest-for-nyc-mayoralty/>] See generally CFB Advisory Opinions Nos. 2001-1; 2001-3; 2001-10; 2009-6 for the importance of polling information in determining whether a runoff election is reasonably anticipated.

Moreover, the two candidates who have raised the most funds were not leading in the June 26 poll, further indicating the volatility of the Democratic Party primary for public advocate. See CFB Advisory Opinions Nos. 2009-5 (CFB determination that runoff primary for public advocate was reasonably anticipated after noting that the two candidates trailing in public polls have raised the most contributions).

- (4) The Democratic Party primary for public advocate is merely four weeks from the submission of this request. The CFB has considered “the proximity to the date of the primary” as a factor in assessing whether a runoff election is reasonably anticipated. See generally Advisory Opinion Nos. 1999-1; 2001-3; 2001-10; 2009-5; 2009-6. Specifically, the CFB has cited periods of time longer than that remaining in the 2013 race for the Democratic Party

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nomination for public advocate as factors underlying a finding of reasonable anticipation. See Advisory Opinion Nos. 2013-2 (June 20, 2013) (finding of reasonable anticipation with 15 weeks remaining before Democratic Party mayoral primary election); 2009-5 (finding of reasonable anticipation with 11 weeks remaining before Democratic Party primary election for public advocate).

- (5) Media commentary suggests that a Democratic public advocate runoff primary election is likely. While the public advocate primary has yet to receive extensive coverage in the press, several articles have clearly implied that a runoff primary for the Democratic Party nomination should reasonably be anticipated. Examples include:
- a. “But the race to succeed [Bill de Blasio for public advocate] is viewed by many political analysts as being wide open.” Schumer Endorses Candidate for Public Advocate [New York Times, August 12, 2013, <http://www.nytimes.com/2013/08/13/nyregion/schumer-endorses-candidate-for-public-advocate.html>]
 - b. “[T]he [June 26] poll showed the race is extremely fluid, with 54 percent of Democrats saying they remained undecided.” Surprising Results Emerge From First Public Advocates Poll [Politicker, June 26, 2013, <http://politicker.com/2013/06/surprising-results-emerge-from-first-public-advocates-poll/>]

These facts make clear that it is now reasonable to anticipate a runoff primary election for the Democratic Party nomination for public advocate. The Board has issued such determinations in similar circumstances. See CFB Advisory Opinions Nos. 2001-10; 2009-5, *supra*. We therefore urge the Board to issue a determination that permits all candidates for public advocate seeking the Democratic Party nomination to solicit and accept additional contributions for a reasonably anticipated runoff primary election, in accordance with the requirements of CFB Rule 1-04(q).

Thank you for your consideration,

Sincerely,



LAUREN POPPER ELLIS
Campaign Manager
Squadron for New York

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