



September 6, 2005

Hon. Frederick A. O. Schwarz, Jr.
Chair, NYC Campaign Finance Board
40 Rector Street
New York, NY 10006

Dear Chair Schwarz,

Citizens Union wishes to address the exempt expenditure claims made by the Gifford Miller for New York in its letter to the Chair of the Campaign Finance Board dated September 2, 2005.

Though Citizens Union is not privy to all the facts and circumstances surrounding the request, there is no question that the Gifford Miller for New York campaign has filed an exempt request that goes beyond previously understood and accepted bounds of what should be considered necessary expenses for the purpose of placing a candidate's name on the ballot.

While it is necessary to acquire many more than the legally required floor of 7,500 signatures in order to stave off challenges to the validity of collected signatures and to assure placement on the Democratic ballot, questions are raised when the number of signatures that are submitted (158,000) is nearly twenty-one times more than is required.

The question becomes when does petitioning that involves the distribution of campaign literature cross over the line to become outright campaigning subject to otherwise applicable spending limits?

There have been no statutorily placed ceiling limits on the number of signatures a candidate may acquire to secure a place on the ballot. And so the Miller campaign has taken full advantage of the apparent rights available to it under the campaign finance law which allows it to exempt those expenses which are legitimately seen as associated with its efforts to gain a position on the ballot for the candidate.

It is hard to fathom how the effort to secure 158,000 signatures - which involves extensive voter contact and includes the distribution of campaign literature - is so necessary in order to place the candidate's name on the ballot. The Miller campaign's activities have demonstrated that at a minimum a loophole exists in the exempt expenditure provision that allows candidates to contact voters and promote a candidacy while under the guise of petitioning when there is no signature limit placed on the campaigns.

Given the past policies and practices of the Campaign Finance Board in handling the exempt costs of petitioning expenses, it appears that the Miller campaign may have complied with the letter of the law. However, Citizens Union is troubled by the Miller campaign's flouting of the spirit behind the campaign finance program. The Miller campaign's creative and expansive use of petitioning efforts raises legitimate issues about how much a campaign's petitioning expenses in which campaign

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literature is distributed should reasonably be exempt from the spending cap for campaign participants.

Citizens Union finds it reasonable and appropriate for the Campaign Finance Board today to review the Miller campaign's petitioning costs and the literature used by the campaign to determine if it 1) seems less about the about the effort to place the candidate on the ballot and more about partisan campaigning in support of the candidate and 2) violates the provisions governing petitioning expenses eligible for exemption from the spending cap. In enforcing appropriate compliance with the law, Citizens Union urges the Campaign Finance Board to not create new presumptions governing this area one week before the Primary Election.

I hope that our views on this matter are helpful to the Campaign Finance Board in its deliberations.

Sincerely,

Dick Dadey
Executive Director