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MEMBER OF DISTRICT OF COLUMBIA +
MEMBER OF CONNECTICUT BAR ∞
MEMBER OF VIRGINIA BAR *

May 28, 2013

VIA ELECTRONIC 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 firm represents New Yorkers for de Blasio (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 mayor 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 mayor is not seeking re-election. Since the advent of the runoff primary requirement, runoff primaries for the Democratic nomination for mayor have been held in both prior instances in which the incumbent did not seek re-election (1973 and 2001).

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- (2) Five or more candidates will likely be on the primary election ballot. According to the CFB website, five of the declared mayoral candidates seeking the Democratic Party nomination for mayor have each reported raising in excess of \$3.3 million dollars. Two other prospective Democratic primary candidates have raised more than \$200,000. It thus appears that five or more candidates have the means to vigorously contest the nomination, such that it is reasonable to anticipate that none will receive the 40 percent or more of the votes cast needed for nomination without a runoff primary. See Election Law §6-162.

Similar competitive circumstances in which four or more candidates were on the Democratic mayoral primary ballot produced runoff primaries in 1973, 1977, and 2001. The fact that the 1989 and 2005 primary contests did not also ultimately result in runoff primaries 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. 2009-5 (July 16, 2009) (CFB determination that runoff primary for public advocate was reasonably anticipated); 2005-2 (July 7, 2005) (CFB determination that runoff primary for mayor was reasonably anticipated); 2001-10 (Aug. 23, 2001) (CFB determination that runoff primary for public advocate was reasonably anticipated); 2001-1 (Mar. 13, 2001) (CFB determination that runoff primary for mayor was reasonably anticipated).

- (3) Public opinion polls indicate the likelihood that no candidate will receive 40 percent or more of the votes cast in the Democratic primary election for mayor.

- a. The most recent poll shows that no candidate currently has more than 24 percent support among registered Democrats. “‘The Democratic primary for mayor remains wide open,’ says Dr. Lee M. Miringoff, Director of The Marist College Institute for Public Opinion. ‘It is likely to come down to who can punch their ticket for the runoff.’” [Marist Poll, May 28, 2013, <http://maristpoll.marist.edu/528-weiner-shows-gains-on-the-heels-of-candidacy-announcement/>]
- b. “This poll says there’s a runoff. It just doesn’t say who’s in the runoff.” [Quinnipiac University Poll, May 22, 2013, <http://www.quinnipiac.edu/institutes-and-centers/polling-institute/new-york-city/release-detail?ReleaseID=1894>]
- c. “[Weiner] makes it even more difficult for any of the Democratic contenders to reach the needed forty percent to avoid a run-off.” [Marist Poll, April 16, 2013, <http://www.quinnipiac.edu/institutes-and-centers/polling-institute/new-york-city/release-detail?ReleaseID=1894>]

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- (4) Media commentary suggests that a Democratic mayoral runoff primary election is likely.
- a. "Christine Quinn's lead in the race for the Democratic nomination for New York City mayor continued to slide, with it looking increasingly unlikely she, or any candidate, will win the primary without a runoff, a poll released Wednesday showed." Poll: Democratic Runoff Likely in Mayor's Race [Wall Street Journal, May 22, 2013, <http://blogs.wsj.com/metropolis/2013/05/22/poll-democratic-runoff-likely-in-mayors-race/>]
 - b. "[Weiner] guarantees a runoff but doesn't guarantee his own place in that runoff,' said one Democratic consultant who keeps a close eye on politics in New York City." Anthony Weiner is Running for Mayor of New York City. But, Can He Win? And Does It Even Matter? [Washington Post, May 22, 2013, <http://www.washingtonpost.com/blogs/the-fix/wp/2013/05/22/anthony-weiner-is-running-for-mayor-of-new-york-city-but-can-he-win-and-does-it-even-matter/>]
 - c. "Weiner's entrance changes the Democratic primary significantly, virtually guaranteeing a runoff and forcing the other candidates to recalibrate their pitches, which target specific slices of the primary electorate." Presenting a New-And-Improved Anthony Weiner, As Rivals Prepare For the Old Version [Capital, May 22, 2013, <http://www.capitalnewyork.com/article/politics/2013/05/8530201/presenting-new-and-improved-anthony-weiner-rivals-prepare-old-versi>]

These facts make clear that it is now reasonable to anticipate a runoff primary election for the Democratic Party nomination for mayor. The Board has issued such determinations in similar circumstances. See CFB Advisory Opinions Nos. 2009-5, 2005-2, 2001-10 and 2001-1, *supra*. We therefore urge the Board to issue a determination that permits all mayoral candidates seeking the Democratic Party nomination to solicit and accept additional contributions for a reasonably anticipated runoff primary election, in accordance with the requirements of Rule 1-04(q).

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Thank you again for your consideration.

Very truly yours,

GENOVA BURNS GIAN TOMASI WEBSTER LLC

A handwritten signature in black ink, appearing to read 'LDL', with a stylized flourish at the end.

LAURENCE D. LAUFER

LDL:mh