



## TRANSPORTATION ALTERNATIVES

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### Testimony Submitted by Juan Martinez, General Counsel At the October 27, 2011 Hearing on Proposed Independent Expenditure Rules for New York City Elections

Transportation Alternatives (T.A.), a member-supported, not-for-profit, non-partisan advocacy organization, is New York City's leading voice for biking, walking and public transit.

We have studied the Campaign Finance Board's proposed regulations on electioneering and have a specific concern that we would like the Board to address. The Board's task is unenviably challenging: regulating independent expenditures while still allowing not-for-profit advocacy groups to speak freely. This requires making fine distinctions. The Board has shown an admirable dedication to doing this job well.

First, a general point - every moment T.A. dedicates to filling out mandatory reports consumes time and staff resources we can't spend making New York City a better and safer place for biking, walking and public transit.

Of course, compliance with the law is our duty as a not-for-profit organization that advocates and lobbies, but we worry that the proposed regulations are written so broadly that they will pressure us to censor ourselves and curtail our advocacy. We suspect this unintended chilling effect will be felt across the city, and many not-for-profits will avoid legitimate advocacy opportunities because they fear they will not conform to the letter of the regulation, even as they conform to its spirit.

Specifically, we ask that the CFB draft a more inclusive definition of member communications. The proposed regulations define the term "member" very narrowly. Basically dues-paying members, like those who support T.A. financially, are considered members - and no one else. That definition excludes our supporters, who are the vast majority of people that have affiliated themselves with T.A.'s work. Broadly speaking, our supporters include volunteers, our Facebook fans, Twitter followers, those that receive our electronic newsletters and advocacy alerts, those who have signed our petitions and many others. Our deep relationships and consistent communication with our supporters is our strength.

The Board's definition is too narrow because excluding supporters from our campaigns would curtail our public education efforts and stifle the democratic process without reducing the instances of electioneering that concern the Board. Our supporters expect to hear from us with regularity about matters that we both consider important - including whether "Office Holder/Candidate X's bill on bikes" is wrong. They will not understand that we are not allowed to comment directly on Officeholder X's position simply because they are up for reelection in a few months; they will instead simply assume that the position is not *that* wrong, or that perhaps, the position is actually right. Our silence will be wrongly equated as support, and we will be less relevant to our supporters at precisely the time of year when the issues we both care about are at the forefront. Indeed, the blackout period may become somewhat of a safe haven for incumbent-candidates to ram through bad policy positions at a point when they know it may go unchallenged.

The key distinction here between the "electioneering" that the CFB is trying to regulate and the communications we send is that our aim is not to influence an election. Indeed, given our tax status, it would be impermissible for us to have that aim. Given this fact, and given the reality of these long-standing relationships that our supporters have opted into, we strongly encourage the Board to expand the definition of membership to include those supporters who have opted to receive communications from an advocacy organization.