



MASON TENDERS' DISTRICT COUNCIL OF GREATER NEW YORK POLITICAL ACTION COMMITTEE

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& LONG ISLAND

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Testimony of Michael J. McGuire
Representing the Mason Tenders' District Council of Greater New York
Political Action Committee
before the New York City Campaign Finance Board
Re Proposed Rules Amendments

Good morning. My name is Mike McGuire, and I am the Director of the Mason Tenders' District Council of Greater New York and Long Island Political Action Committee. The Mason Tenders' District Council is comprised of more than 15,000 members in six local unions of the Eastern Region of the Laborers' International Union of North America. These locals represent men and women working throughout the five boroughs and Long Island as recycling plant and waste transfer station employees, building construction laborers, mason tenders, plasterer's helpers, demolition workers, high school teachers and asbestos and hazardous material abatement laborers.

Our organization operates as a traditional political action committee, not as an independent expenditure committee; however, as a membership-driven organization we still find these proposed rule changes to be problematic. It has always been our understanding that part of the Campaign Finance Board's mandate is to increase voter participation. We believe the proposed rules will have the opposite effect, both to our members and to workers represented by other labor organizations.

Our greatest concern is with the proposed presumption against independence. While it is our understanding that this presumption, in and of itself, violates the New York City Campaign Finance Act by evading the New York City Charter's Administrative Procedure Act, the very concept of a finding of presumed guilt without adjudication flies in the face of the very roots of American jurisprudence.

Very simply put: how does one prove that something *didn't* happen? Not in a case where there were communications between two entities, but in a case where there were none? There are no documents to produce, there are no phone logs...there is simply nothing. The CFB presumes there was coordination, and then demands: "Now, prove there wasn't!" This is essentially unfair and biased.

The question then gets raised, "How often could such a scenario occur?" The answer: potentially, quite often. Under current rules, there are six factors that determine whether an expenditure is independent. The proposed regulations add two additional factors in the determination process. The regulations under discussion would create a situation where the presence of any one the eight factors creates the rebuttable presumption of coordination. In the

relatively small world of New York City politics, it would be next to impossible to avoid the presumption.

This takes us back to proving that something that doesn't exist never existed. How does one go about such a task? First, hire an attorney. Second, turn in all laptops, notebooks, legal pads and hard drives for scrutiny? Third, lay bare every letter, note, email, phone log, instant message, voice mail, text message, social media posting, et cetera for the perusal of the CFB? And as the CFB has expressed a belief in the past that firewalls—an actual system to guarantee independence—don't actually work, what's to stop a ruling that, even though no evidence has been produced pointing to coordination, there was, indeed, coordination?

Further, should, after all of these steps have been taken, there be a finding of independence...exoneration is a wonderful thing, but would the CFB reimburse for legal fees, production of documents, lost time, and all other ancillary expenses incurred in rebutting the rebuttable presumption of coordination? After all, the unfair, and likely unconstitutional, presumption of coordination is what caused all of these expenses to be incurred.

The mere threat of having to jump through so many hoops will have a chilling effect on participation in the political process, particularly in regard to membership organizations like unions. Our political operations are funded by small contributions, voluntarily donated by our members from their take home pay (every penny of which, by the way, is a matter of public record). We are not the Koch brothers, or Walmart, or the real estate barons of New York City that keep grand contingents of attorneys on retainer. Just the idea of having to go through such machinations will have many saying, "I'd rather not take the chance." when it comes to political participation.

We do not mean to impugn the CFB's integrity in these matters, only to point up the inherent unfairness of a presumption of guilt. We respectfully request, on behalf of the 15,000 hard-working men and women of our local unions, that you reconsider the proposed rule changes.

Respectfully submitted,

Michael J. McGuire
September 15, 2016