Diversity for Hire: Astroturfing, New Flyer and the Transportation Diversity Council
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Jobs to Move America

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Foreword

Rev. Terrence Melvin,
President, Coalition of Black Trade Unionists

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Racial justice issues are worker issues. In the midst of a pandemic and a long-awaited uprising for racial justice, the conditions of frontline workers, who are disproportionately people of color,1 should be front of mind for everybody. We already have food deserts, banking deserts, militarized police, inadequate infrastructure, and a racist criminal justice system. The convergence of the killings of Ahmaud Arbery, Breonna Taylor and George Floyd, among so many others, with the COVID-19 pandemic and its disproportionately negative impact on Black, Latinx, and Indigenous workers and communities,2 compounds the traumatic social and emotional impact on everybody, but especially people of color.

And when profitable multi-billion dollar corporations respond to the pandemic by ignoring their workers’ health and safety and refusing to pay them during a pandemic shutdown, that combines with all the other factors and contributes to the suffering of Black people and other people of color too.3 Another way big profitable companies contribute to Black suffering is by keeping Black workers out of unions, because unions help shrink the Black-white wage gap,4 while declines in union density grow that gap.5 As one scholar said recently, “systematic social deprivation and economic disadvantage is maintained and reinforced by those with economic and political power.”6

But in the face of despair’s obstacles, hope challenges with a deeper inquiry, reflected in Marvin Gaye’s song, “What’s Going On?” This is the inclusive and democratically accountable question that must be asked and for which strategic, transparent, and participatory answers must be found. It is another way of asking, “how do we not just fiddle with challenging racism at its moments of embarrassing manifestations; but begin to end it at its structural roots?”

We find a significant part of the answer to that question in our support for the campaign for New Flyer of America, a multi-billion dollar global bus manufacturer, to negotiate a national Community Benefits Agreement (CBA) with the Alabama Coalition for Community Benefits and Jobs to Move America. A CBA would provide better jobs, equal opportunity, and healthier communities for all New Flyer workers, especially workers of color.

It is unacceptable for New Flyer or any other company to try to defeat worker and community demands for a CBA by using a fake grassroots organization to create an unenforceable “framework” with no participation from or democratic accountability to workers and community members. And it is unacceptable for any non-profit organization, including a Black-led non-profit, to allow itself to be used in that way. Astroturfing for corporations that are harming front line workers of color fighting for their human rights and dignity is never okay, especially now, no matter who is doing the astroturfing.

Identifying, addressing and changing systems of inequity is the calling of our times. We can’t allow injustice to go unchecked during the pandemic and then emerge from social isolation and expect not to go back to the same old way of doing things. We must sow the seeds of justice now to reap them at the harvest.
Acknowledgments

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The Author also wishes to acknowledge the Alabama Coalition for Community Benefits: A Better Balance, Alabama Arise, Alabama State Conference of the NAACP, Adelante, Communications Workers of America (CWA), GASP, Greater Birmingham Ministries, Hometown Action, United Steelworkers (USW), International Association of Machinists and Aerospace Workers (IAM), and International Brotherhood of Electrical Workers (IBEW).
Executive Summary

Systemic racism infects every single institution in our society, including corporations. In the wake of the police murders of George Floyd, Breonna Taylor and so many others, corporations across America have made statements affirming a commitment to anti-racism and racial equity. Some of these corporations have committed to looking deeply at and addressing racial inequity in their ranks, while others have been criticized for their hypocrisy.

Broadly, experts have identified two paths corporations can follow in response to demands that they do their part to remedy the present day institutional manifestations of longstanding racism and white supremacy. One, the high road, is to give workers a voice by addressing the underlying issues they bring up. The other, the low road, is to engage in a sophisticated marketing campaign to convince the public that the corporation is “doing the right thing,” while taking little action to end institutional injustice, thereby perpetuating it.

New Flyer of America (New Flyer), the largest manufacturer of public transit buses in North America, is a multi-billion dollar corporation that has taken the low road. In the fall of 2019, Black and women workers had, in survey responses and interviews, identified race and gender discrimination and dangerous and unhealthy conditions at New Flyer’s Alabama factory as major concerns. In a more recent report, even greater percentages of surveyed workers raised concerns about discrimination and unsafe working conditions at the Alabama plant.

New Flyer rejected a demand from a coalition of Alabama residents, civil rights groups, and workers to negotiate an enforceable, national “Community Benefits Agreement” to create better jobs, equal opportunity, and healthier communities for the company’s workers. Instead, on the Martin Luther King, Jr. holiday in 2020, New Flyer announced a “partnership” with the Transportation Diversity Council (TDC), a New York-based organization, to create a so-called Community Benefits Framework. The Alabama coalition charged that, in reality, New Flyer hired TDC to run an “astroturf” campaign to lend a facade of legitimacy to New Flyer’s refusal to address the concerns of workers and residents.

This report documents how New Flyer’s relationship with TDC follows a well-traveled corporate astroturf low road:

- TDC has collaborated with New Flyer to produce a vague “framework” that has no mechanisms of enforceability and no means for input by affected workers, instead of an enforceable Community Benefits Agreement created with true worker and community participation that provides meaningful benefits and genuine accountability;

- TDC has repeatedly demonstrated that it sees its role as acting on behalf of New Flyer, not representing the independent interests of workers and community members;
• TDC, as part of its core activities, advocates for transportation businesses and executives and assists their efforts to access taxpayer funds; and

• TDC has conflicts of interest that likely prevent it from independently representing worker or community interests.10

Introduction

New Flyer of America Inc. and New Flyer Industries Canada ULC (New Flyer)11 are the North American arm of a multi-billion dollar12 global bus manufacturer known as NFI Group, Inc. (NFI).13 New Flyer is the largest manufacturer of transit buses and motor coaches in North America, with factories in Alabama, California, Kentucky, Minnesota, New York, and Canada employing over 6,000 workers.14 Over 80 percent of New Flyer’s revenues come from public transit agencies in cities across North America,15 including Birmingham, Chicago, Los Angeles, New York, Seattle, Washington, D.C., and many others.16

In October 2019, New Flyer workers from Anniston, Alabama, responding to a survey, expressed concerns about discrimination and dangerous and unhealthy working conditions to Alabama A&M University researchers. In a subsequent published report, Jobs to Move America (JMA) summarized the findings of the Alabama A&M researchers and JMA interviews as follows:17

• African American survey respondents were more than twice as likely to say that, as far as they knew, discrimination was a “big problem” in their workplace. Forty-three percent of surveyed African-American workers reported being denied promotions, feeling isolated, receiving less support from management, and being treated as if they were incompetent because of their race.18

• In interviews with JMA, several workers stated that they had experienced race-based discrimination and sexual harassment and discrimination in New Flyer’s Anniston facility.19

• Four of twelve Anniston survey respondents who had filed complaints about discrimination, health and safety, or other working conditions reported facing retaliation, including being assigned too much work or hazardous work. Twenty-three percent of the surveyed workers identified production issues, and of those, 30 percent said that they did not feel that they could safely report issues with the assembly or manufacture of the product without retaliation.20

• JMA’s interviews and Alabama A&M’s preliminary survey data showed at least a dozen workers reported working far beyond the standard work week. Eleven survey respondents reported being given only a few hours notice before a schedule change, and 11 workers interviewed by JMA complained that non-voluntary overtime has a negative impact on their health and well-being.21

• Sixty-three percent of workers responding to the AAMU survey reported coming into contact with toxic chemicals, 15 percent reported being seriously injured on the job, and two reported filing complaints about dangerous working conditions.22 Additionally, in 2016, the Occupational Safety and Health Administration (OSHA) fined New Flyer for safety problems at its Anniston plant.23

At the end of June 2020, the Alabama A&M researchers supplemented their previous findings and reported that even larger percentages of Alabama New Flyer workers responding to surveys reported race and gender discrimination, retaliation, and dangerous working conditions.24
Worker surveys highlight New Flyer ESG Report Flaws

Surveyed workers’ expressed concerns about discrimination stand in contrast to the claims in the NFI Group’s “Environmental, Social and Governance” (ESG) Report that it has “zero tolerance for workplace discrimination and harassment.” In the ESG report, NFI claims to be committed to “promote into all job levels the most qualified persons without regard to race…[or] gender,” to “ensure the representation is tracking in a positive direction” and to “[p]romot[e] inclusive leadership.” Yet even in the ESG Report, New Flyer acknowledged a race and gender breakdown that shows its middle and executive managers are more than 93% white. Eighty percent of the people in middle management and executive roles in 2019 were men. This would be bad news in any industry. It is particularly egregious that New Flyer, which says it receives 80% of its revenues from taxpayer-funded public transit agencies, has only a small proportion of executive and middle management roles filled by people of color, because New Flyer manufactures a product that communities of color rely upon. According to a study by the American Public Transit Association, “[c]ommunities of color make up a majority of [public transportation] riders (60%), with African-American riders comprising the largest single group (24%) within communities of color.” Moreover, the health and safety issues reported by New Flyer Anniston workers in response to the Alabama A&M surveys and the OSHA fines levied against New Flyer raise questions about NFI’s stated commitment in the ESG report that “nothing is more important than the health and safety of our team members…and the protection of the environment.”

Following the survey responses to the Alabama A&M researchers, a coalition of Alabama residents, workers, and civil rights and faith groups such as the Alabama NAACP, Alabama Arise, and the Greater Birmingham Ministries asked New Flyer to negotiate an enforceable, national “Community Benefits Agreement” to create better jobs, equal opportunity, and healthier communities for New Flyer workers. New Flyer refused to negotiate a Community Benefits Agreement with the coalition, ignoring and dismissing the voices of organizations deeply rooted in the communities around its Anniston factory.

Instead, on the Martin Luther King, Jr. holiday in 2020, New Flyer announced they had entered into an expanded “partnership” with the Transportation Diversity Council (TDC), a New York not-for-profit organization which does not include affected workers or community members among its leadership, to create a so-called “Community Benefits Framework.” New Flyer claimed this “framework” would focus on workforce diversity and training with local workers and community partners, first in Alabama and later in New Flyer locations around the country. As discussed in Section III below, the TDC “framework” provides no way to ensure that New Flyer applies its principles, and no way for New Flyer workers and community members to participate in constructing or enforcing it.

In a February 4, 2020 letter, Alabama coalition members denounced TDC as an organization hired by New Flyer to run an “astroturf” cam-
paign to lend a facade of legitimacy to New Flyer’s refusal to address the concerns of workers and residents about racism and dangerous working conditions.  

I. Astroturfing

A. What is “astroturfing”?

Advocates for New Flyer workers and affected community members charge that TDC and New Flyer’s relationship reflects a phenomenon known as “astroturfing.” The name is drawn from the artificial turf used for sporting events, which appears real, but has no actual living grass roots.

Hence,

Astroturf organizations are fake grassroots organizations usually sponsored by large corporations to support any arguments or claims in their favor, or to challenge and deny those against them. They constitute the corporate version of grassroots social movements. Serious ethical and societal concerns underline this astroturfing practice, especially if corporations are successful in influencing public opinion by undertaking a social movement approach.  

This investigation will explore the many ethical and social issues created by New Flyer’s astroturf relationship with TDC.

Astroturfing is, by definition, antithetical to democracy; it is

the creation of an organisation or movement with a purportedly popular message but in reality pushing an orchestrated publicity or opinion-forming campaign... on behalf of its self-interested sponsors. By its definition then, astroturfing is fundamentally non-democratic in that it distorts the open process of transparency

and frank debate, conceals the true beneficiaries of political decisions and raises the prospect of the few benefitting from the support of a mythical many.

B. How has astroturfing been used?

There are, unfortunately, numerous examples of corporations pursuing profit by creating a false appearance of grassroots support to undermine the work of consumer, worker, and community advocates while advancing the interests of corporate beneficiaries.

The first widely publicized example of astroturfing began in 1993, when the corporate tobacco behemoth Philip Morris hired a PR firm to discredit a new Environmental Protection Agency report that found tobacco is a carcinogen that causes thousands of deaths from lung cancer every year. The PR firm told Philip Morris that to counter the EPA report, it needed to “create the impression of a ‘grassroots’ movement—one that had been formed spontaneously by concerned citizens.” The PR firm set up “a national coalition intended to educate the media, public officials and the public.” For a fee, the firm “prepare[d] and place[d] opinion articles in key markets” in order to “establish an image of a national grassroots coalition.”

This same Philip Morris-funded coalition went on to help launch the effort to repudiate the science behind climate change, with funding from Exxon Mobil. After its own scientists began warning the company “the scientific basis for the Greenhouse Effect [...] cannot be denied,” Exxon Mobil began paying several other organizations seeking to undermine the overwhelming scientific consensus on climate. In 1998, these efforts included publishing a petition that used the font and format of the journal of the National Academy of Sciences, making it appear as if it was written and endorsed by a renowned and respected climate science organization. Another report sponsored by a conservative think tank, the U.S. Heartland Institute, was published under the banner of the “Nongovernmental International
Panel on Climate Change,” a name aimed at creating confusion with the United Nations-affiliated “Intergovernmental Panel on Climate Change.”

Also in 1998, the American Petroleum Institute—the county’s largest oil trade association—created the “Global Climate Science Communications Plan.” This plan set the roadmap for deceiving the public about climate change by “develop[ing] and implement[ing] a national media relations program” while “keeping industry’s role hidden.” Understanding that fossil fuel-affiliated scientists would lack credibility, the industry cultivated seemingly “independent” scientists by funding their work.

In 2006, a farmworker organization called the Coalition of Immokalee Workers (CIW) was urging McDonald’s to pay a fair wage and improve working conditions and human rights abuses for agricultural workers in McDonald’s’ supply chain. McDonald’s, seeking to avoid these demands, signed on to a code of conduct “written by agricultural employers without input from the workers it will affect.” This weak code of conduct was sponsored by an organization called Socially Accountable Farm Employers (SAFE).

According to the Robert F. Kennedy Center for Human Rights,

SAFE is headed by the Florida Fruit and Vegetable Association and the Redland Christian Migrant Association. The FFVA is a membership organization of agricultural employers, representing their interests. While the RCMA is an excellent child care provider, it has no expertise or experience with labor issues and, as much of its budget is funded directly by FFVA, it cannot be considered independent enough from agricultural employers to be a voice for fair labor standards.

Eventually, McDonald’s succumbed to genuine organizing and public pressure (including the exposure of SAFE) and signed “a stronger code of conduct [with CIW] based on the principle of worker participation.”

In 2014, as the Federal Communications Commission was considering new rules on “network neutrality” that would classify broadband services as a public utility, a group called the “Minority Media and Telecommunications Council” (MMTC) coordinated an onslaught of letters claiming such a change would “harm communities of color.” It turned out that MMTC had received “hundreds of thousands of dollars from Verizon, Comcast, the National Cable and Telecommunications Association, and other telecom sources.” A former Mayor who lined up Latino civil rights groups to oppose net neutrality was on staff with one of Verizon’s lobbying firms. The Congressional Hispanic Leadership Institute (CHLI), which hosted a Capitol Hill event arguing that net neutrality would harm Latino and other “minority and disenfranchised communities,” was sponsored by Verizon, Comcast, and AT&T.

In hiring TDC, New Flyer is following the same well-established corporate playbook: deflect genuine organizing against discrimination and for positive change by workers and communities affected by its actions by affiliating with a non-profit organization that appears independent but is in fact its partner and defends it in the media.

II. Background

NFI and New Flyer

NFI says that it is “North America’s largest and most diversified bus and coach manufacturer.” It states that 80 percent of its revenues, which topped $2.5 billion in both 2018 and 2019, comes from “public (i.e. government funded) customers.” It reported profit margins of 13.4 percent in 2017, 12.5 percent in 2018 and 11.6 percent through the first two quarters of 2019.
NFI subsidiary New Flyer states that it is “North America’s largest transit bus manufacturer and EV leader.” In the U.S., workers at the New Flyer factories in St. Cloud and Crookston, Minnesota are represented by the Communications Workers of America. New Flyer’s remaining U.S. manufacturing facilities, in Anniston, Alabama; Elkhart, Indiana; Shepherdstown, Kentucky; and Jamestown, NY; as well as its service centers in Ontario, California and Renton, Washington; are non-union.61

The Transportation Diversity Council

According to its Certificate of Incorporation, TDC’s purposes include:

- To support transportation infrastructure in developing countries…;
- To initiate a global diversified workforce of transportation and construction professionals …;
- To encourage and support diversity in ownership and senior management throughout the transportation industry…; and
- To expose young people to the opportunities for ownership and employment in the transportation field…62

On its website, TDC says that it is led by seasoned executives from the worlds of transportation, education and construction who are dedicated to ensuring that every individual and company has the opportunity to fully contribute to America’s future. TDC was formed in 2010 to meet the growing need for leaders, technical professionals, educators and construction workers in the transportation and construction industries. Those needs can only be met by engaging and developing a large and diverse workforce.63

In practice, TDC has no prior experience negotiating genuine Community Benefits Agreements or advocating for the independent interests of rank and file manufacturing workers or communities affected by a manufacturer’s operations.

TDC began its “partnership” with New Flyer in 2017, when New Flyer retained it to recruit, and train, “disadvantaged workers” at its service facility in Ontario, California.64

The partnership later expanded to include New Flyer’s Alabama factory and the eventual “Community Benefits Framework” discussed below.

III. The evidence suggests TDC is astroturfing for New Flyer.

TDC fulfills the same “astroturfing” function for New Flyer as groups like the “Minority Media and Telecommunications Council” (MMTC) did for the telecommunications companies and the “Socially Accountable Farm Employers” (SAFE) did for McDonalds. Just as McDonalds did with SAFE, New Flyer has collaborated with TDC to produce a vague “framework” that has no mechanisms of enforceability and no means for input by affected workers, instead of working to create an enforceable Community Benefits Agreement with real worker and community participation that provides meaningful benefits and genuine accountability.

Like MMTC, TDC does not appear to be a grassroots representative of the independent interests of workers and community members, but rather acts on behalf of corporations like New Flyer. Indeed, as established below, TDC largely advocates for transporta-
tion businesses and executives and assists their efforts to access taxpayer funds. Of even greater concern, TDC also has conflicts of interest that prevent it from independently representing worker or community interests. And the vague, unenforceable “framework” it produced with New Flyer bears little resemblance to a binding, enforceable Community Benefits Agreement.

A. A real Community Benefits Agreement protects the independent interests of workers and community members.

1. What is a Community Benefits Agreement?

Community Benefits Agreements (CBAs) are legally enforceable agreements between private companies and coalitions of community and labor groups. CBAs can be used to ensure a wide range of high-road job standards and equity measures that meet community needs. When cities and states enter into contracts with private corporations to purchase manufactured equipment, these private corporations are rarely required to create good jobs or commit to equity measures. CBAs allow coalitions of community-based groups, workforce development organizations, labor unions, and other social justice advocates to ensure deeper equity commitments and high-road hiring practices at these facilities.

CBA expert Scott L. Cummings, Robert Henigson Professor of Legal Ethics and Professor of Law at UCLA School of Law, says that a “classic” CBA is a legally enforceable contract with two components:

a. The coalition gives up something in exchange for the company giving up something. Generally, the coalition gives up the right to continue to protest against the company in exchange for the compa-

b. A community benefits program that the company promises to provide is negotiated with the coalition. The program tends to fall within buckets of commitments around jobs, diverse hiring commitments, wages, and other goals.

2. How do we identify a CBA process and product as effective or ineffective?

According to Community Benefits Agreement expert Ben Beach, Legal Director of the Partnership for Working Families and Director of the Community Benefits Law Center, there are myriad examples of effective and ineffective CBAs, in terms of both process and product, from which the essential characteristics of both can be identified.

An effective Community Benefits Agreement includes three main characteristics, all of which must be present according to Mr. Beach:
a. **Democratic participation.** The process must include robust, equitable engagement of communities who will be impacted by the economic development, especially those who would otherwise be excluded or not have a powerful voice in shaping and approving the development. In almost every case, this includes communities of color, so the engagement must include a focus onremedying historic inequities affecting communities of color.

b. **Meaningful benefits.** The benefits ultimately provided for in the CBA are not only a product of authentic community engagement, they represent authentically articulated community needs. The benefits are robust and adequate to the task of meeting the needs that the community has identified. Ineffective CBAs cover issues that are not urgent or high priority for affected communities, or pay lip service to issues that are important, for example the hiring of local marginalized or disadvantaged individuals, but do not treat the issue with the depth and seriousness it requires.

c. **Accountability.** This includes:

- CBA terms are drafted with specificity that makes them readily enforceable and easy to follow and clear. They don’t contain vague words that allow for interpretation.

- Community enforcement is readily accomplished – the agreement provides a procedure so that community members who are parties can easily take steps to ensure that the promised benefits are realized.

- Robust community oversight of implementation of the CBA, so the community can be confident it has all the information about what is happening and they have a role through implementation.

An ineffective or astroturf CBA, on the other hand, can be identified from one or more of the following characteristics:

- **There is little real community participation:** the signatories are handpicked by the company or politicians, there is no coalition presence at all, or the coalition lacks the broad-based representation of the array of community interests affected by the development.

- **The negotiation process is secretive and exclusive:** a small group is involved in the process with little or no communication with local residents and organizations.

- **The commitments are vague, with no clear timeframes or measurements:** parties may easily opt out, provisions are voluntary, or compliance relies too heavily on good faith efforts; there are no processes outlining how provisions will be implemented to make the commitments real.

- **There are no effective formal means of holding parties accountable:** there is no clearly defined structure to monitor progress; instead, there is an impeded avenue of recourse for the community parties should there be a breach of contract, or there is an inexpensive “buyout” provision under which corporate stakeholders can pay for their obligations instead of actually providing community benefits.71

B. The “Framework” TDC produced with New Flyer does not meet the minimum criteria of a CBA, let alone an effective one.

On March 12, 2020, New Flyer released their “Community Benefits Framework.”72 The “framework” includes a slate of unenforceable promises on serious issues like diversity, health and safety, training, and more.
Drafted with the help of TDC, the “framework” is a response to the efforts of Jobs to Move America and the Alabama Coalition for Community Benefits, which have been organizing to hold New Flyer accountable by demanding the company negotiate real programs to solve the problems raised by workers through a national Community Benefits Agreement (CBA).

CBA experts Beach and Cummings independently reviewed the New Flyer/TDC “framework” with an eye to the characteristics for effectiveness/ineffectiveness discussed above.

Mr. Beach noted,

The most ineffective community benefits efforts have some common features: vague language; commitments to do little more than comply with the law, and negligible voice or recourse for the purported beneficiaries. New Flyer’s “framework” contains numerous examples of these…

According to CBA expert Cummings, the New Flyer/TDC “framework” fails on the core elements of legal enforceability and concrete commitments on the part of the company. The innovation of a CBA is that companies would be on the hook for commitments that are legally defined. The New Flyer Framework is a set of general principles that are vague in important respects and have no mechanisms of enforceability and no means for input by affected workers. That makes it different from successfully negotiated Community Benefits Agreements that have real impact.

As established above, a genuine CBA is a legal agreement that would establish real and enforceable commitments around equitable hiring practices, training, and apprenticeship programs. New Flyer’s “framework” does not meet the threshold test of being an agreement – the document was developed by the company itself, with the help of TDC as a hired consultant, not through negotiations with workers or local community members.

Mr. Beach confirms,

The “framework” document bears little resemblance to any of the effective community benefits measures we’ve seen in use all across the country, which contain detailed, measurable commitments, provide for significant roles for community and workers in implementation and enforcement, and result from negotiation with broad coalitions representing impacted communities and workers…

The “accountability” provisions make no mention of a role for communities or workers, including in negotiating or overseeing implementation of local agreements. Much of the content describes steps the company has allegedly already taken internally regarding its workforce and it is thus difficult to see how the document could function as a framework for local negotiation.

The only nod to any form of democratic
participation or accountability to impacted individuals in the document is the Employee Engagement Committee, but this body as described is seemingly selected by the company and merely advisory to the company. The “framework” is also flawed because there is no way to enforce it: New Flyer says they will receive quarterly reports on their progress towards commitments, but these reports will go to New Flyer leadership and TDC; there is no indication that they will be made public, and the “framework” does not provide a mechanism for affected workers or community members to have their concerns adjudicated by an impartial third party. New Flyer is planning to “enforce” the “framework” itself, or have its non-profit-for-hire TDC do so. But, as shown in Section C below, TDC has already shown its partiality by publishing op-eds defending New Flyer and attacking organizations like Jobs to Move America that are advocating for a true Community Benefits Agreement.

New Flyer’s actions make it impossible to trust that it can enforce these commitments itself. For example, the “framework” claims that, “New Flyer has robust whistleblower, incident reporting, and investigation processes that ensure safe disclosure, confidentiality, and non-retaliatory behavior.” However, when Alabama A&M University surveyed workers in New Flyer’s Anniston plant about whether they had faced retaliation for complaining about discrimination, health and safety problems, or other working conditions, “four of the twelve workers who reported filing complaints claimed they faced retaliation, saying that they were given too much work or particularly hazardous work in response.” In the June 2020 Alabama A&M study, an even greater percentage of respondents reported retaliation. “Twenty-four percent of respondents reported filing a complaint with an outside agency…Two thirds…of those who reported filing a complaint then reported experiencing retaliation from the company for having made the complaint.” In 2016, after workers at the Anniston plant complained to OSHA that they were exposed to hexavalent chromium, a toxic welding byproduct, OSHA discovered ten other health and safety violations at the plant. Instead of immediately acknowledging and addressing these issues, New Flyer fought the complaints, although it eventually settled and was assessed fines.

Moreover, the “framework” does not establish what commitments the company is making. The “framework” says New Flyer will pay the “prevailing wage” for the area, but at least three of the states where New Flyer operates, Alabama, Indiana and Kentucky, do not have
a prevailing wage law. Where states do not have a “prevailing wage,” the wages tend to be lower for the same job. Moreover, since “prevailing wage” is a term of art that generally applies to the construction industry, not manufacturing, the phrase as used in the “framework” is meaningless as applied to New Flyer workers. Even if prevailing wage laws did apply to New Flyer manufacturing workers, the “framework” does not commit New Flyer to calculating the prevailing wage as set forth in the law of the states where it operates, so its meaning and application are completely unclear.

The company does not make any commitments around benefits at all. They promise a “social service” program for “employees in need,” without recognizing that if New Flyer were providing living wages and benefits, their employees would not be in need. They also do not say how many employees this program will cover, what the standards would be for coverage, what the program would provide, or how New Flyer compliance with the program would be enforced.

New Flyer says it will work to “bolster community outreach, recruitment and placement” for workers who do not traditionally have access to manufacturing careers, but does not set any actual targets around diversity and inclusion. Nor does New Flyer’s “framework” identify concrete steps the company will take to foster diversity and inclusion, aside from promising to “base all employment decisions on job requirements.” In a country and a company where workers have complained about discrimination against people of color and women and their exclusion from high level managerial, executive and professional positions, a commitment to meritocracy isn’t enough. Conscious, intentional efforts are needed to transform corporate culture to hire and retain traditionally excluded people in these positions. New Flyer isn’t committing to clear goals, benchmarks, or even specific efforts in any of their diversity “commitments.”

According to Beach,

The framework is more specific and serious with regard to [Disadvantaged Business Enterprise (DBE)] contracting, describing an approach with measurable, robust targets and a number of specific process steps. Unfortunately, while DBE contracting is very important on its own, because this aspect of the framework shows the company knows how to take a meaningful approach to community benefits, it reinforces the shortcomings in the remainder of the areas of commitment.

Moreover, DBE contracts benefit owners of outside businesses. They do not benefit New Flyer rank and file workers or affected community members who aren’t business owners.

One of the “framework’s” goals is to increase compliance and accountability with local agreements, but, according to expert Beach, “offers little beyond…generality.” The document does highlight a handful of public contracts with transit agencies that have included Jobs to Move America’s good jobs and equity policy, the U.S. Employment Plan. Unfortunately, not only has New Flyer failed to live up to the jobs and wage commitments outlined in these contracts, the company has actively hid-
den information about these broken promises from the public through protracted and costly litigation.\textsuperscript{83} This raises the question of how a company that refuses to be held accountable for broken promises in public contracts can be trusted to voluntarily fulfill and enforce promises outlined by a private consultant.

Two of New Flyer’s main competitors in the electric bus industry, BYD and Proterra, have already negotiated or are in the process of negotiating CBAs. By refusing to negotiate, New Flyer is an outlier in this industry.

In short, the New Flyer/TDC “framework” fails to include any of the three characteristics of an effective CBA: democratic participation, meaningful benefits, and accountability. It includes all four of the markers of a weak or ineffective community benefits process and product: There is no evidence of any affected community participation in crafting it; the negotiation process was secretive and excluded affected workers and community members; the commitments are vague, with no clear time frames or measurements; and it provides no effective means for holding New Flyer accountable.\textsuperscript{84}

The “framework” produced by TDC and New Flyer thus appears to be a PR exercise aimed at appeasing investors and customers and manufacturing the consent of New Flyer’s workforce. Just as McDonald’s avoided real accountability by joining a corporate-created program with no input or enforcement mechanisms from workers, New Flyer has followed the same playbook with their “framework” and TDC. Indeed, workers that JMA and CWA staff have interviewed or surveyed at New Flyer factories in Alabama, California, Kentucky, Minnesota, and New York report that they have not seen any regular presence of TDC or its representatives at any of these factories, nor were they contacted by TDC in connection with the preparation of the “framework”.\textsuperscript{85} This stands in contrast to New Flyer’s announcement in March 2020 that it would apply its Community Benefits Framework with TDC “across America, including in Minnesota, California, and New York,” while the “initial focus” of its Community Benefits Framework partnership with TDC would “intensively support identifying, training, and onboarding new hires at New Flyer’s Anniston, Alabama facility.”\textsuperscript{86}

This leads to the central problem with New Flyer’s approach to community benefits: its reliance on TDC.

C. TDC regularly acts on behalf of New Flyer, rather than defending the independent interests of workers and community members.

New Flyer claims that its partnership with TDC supports “meaningful relationships with community organizations, in alignment with [Community Benefits Framework] objectives to hire individuals from local groups and programs that serve underrepresented and underserved populations.”\textsuperscript{87} In practice, however, TDC’s President and CEO, Dwayne Sampson, has penned op-eds and provided quotes for press releases defending its “partner” New Flyer from charges it has discriminated against workers and fostered unsafe working conditions, and lauding its purported support for diversity and inclusion efforts.\textsuperscript{88} Sampson
extolled the Community Benefits “framework” TDC produced with New Flyer as “building a foundation that speaks to our shared democratic values,” even as the Alabama Coalition for Community Benefits referred to it as “a heavy-handed attempt to shut down the coalition…which has been organizing to hold New Flyer accountable…” After the New York Post reported on workers’ charges that New Flyer’s response to the COVID-19 virus endangered their health and safety, Sampson published an op-ed praising New Flyer’s response, and attacked organizations seeking to hold New Flyer accountable:

...[In] every jurisdiction where New Flyer operates, they are complying with the rules...New Flyer has risen to the occasion...New Flyer has gone above and beyond...Unfortunately, activist groups hell-bent on pushing their agenda from the sidelines are trying to railroad New Flyer and its employees by promoting their accusations as fact without merit.

Indeed, in correspondence with JMA, TDC has represented itself as acting “on behalf” of New Flyer. Sampson even demanded on behalf of New Flyer that JMA sign a far-reaching non-disclosure agreement before being permitted to visit a New Flyer factory, which would have required JMA to disclose all of its current and future conversations with New Flyer workers to the company. JMA refused this demand.

Sampson’s attacks on worker and community activists seeking the protection of a Community Benefits Agreement stand in contrast to his views before being hired by New Flyer. TDC’s Chief Executive was once quoted by a Brooklyn newspaper touting the benefits for workers and community members in New York of a Community Benefits Agreement. In discussing Brooklyn’s controversial Atlantic yards development, Sampson said,

I’ve been impacted all my life by money and development coming to town. This is the first time we’ve had a chance to be at the table...With [Atlantic Yards] we’ve been able to sign a community benefits agreement with terms that can be enforced. (Emphasis supplied.)

Unfortunately, even that Community Benefits Agreement—negotiated before TDC existed—has been criticized by experts as ineffective, because there were “conflicts of interest between community signatories and the broader community”; the terms of the agreement were “aspirational, broad, with few details on execution and funding;” and it “lack[ed]...enforcement mechanisms.”

D. TDC’s website discloses little of the training expertise New Flyer claims it has.

New Flyer has billed TDC as “a non-profit organization delivering world class education and development programs that promote diversity in the transportation and construction industries...TDC has extensive experience in recruitment, training, and retention of employees in advanced manufacturing...” In fact, as shown below, a review of TDC’s website, its submissions to the IRS, interviews with New Flyer workers, and other publicly available information shows no evidence that, prior to being hired by New Flyer, TDC as an organization had either the objective or experience of advocating for the independent interests of manufacturing employees, or of supporting production workers opposing management discrimination and retaliation.

TDC claims to provide scholarships to “qualified students” but its website does not provide the number, dollar amount, dates, or frequency with which these scholarships are granted, or the identity of any recipients. There is, however, a prominent button soliciting donations, ostensibly to fund the TEC Scholarships. Yet TDC has not reported any scholarship income or expenditures to the IRS.
The “Training” described on TDC’s website is focused not on manufacturing skills but on business topics such as “leadership competency,” “identifying financial resources for business opportunities,” and “building partnerships.” TDC’s website does describe a “Transportation, Education and Construction (TEC) Opportunities Program” that claims to provide “apprenticeships, internships, and fellowships at agencies and related businesses,” but there is no information on the site about any individual placed in an apprenticeship, internship or fellowship through this program. Moreover, TDC’s website provides no indication that this program includes opportunities with pre-apprenticeship and registered apprenticeship programs. Registered apprenticeship and pre-apprenticeship programs help bring underrepresented employees into trades with the skills they need to succeed. Registered apprenticeships also have record-keeping requirements that foster accountability. Finally, the “education” entry on TDC’s website simply provides a link to the Bronx Design & Construction Academy, a New York City public school which is not accessible to New Flyer manufacturing employees, all of whose manufacturing facilities are located outside the New York City metropolitan area.

In a July 17, 2020 interview, a New York City workforce development and training expert with substantial experience, knowledge and contacts in that area advised Jobs to Move America that, “I have been doing workforce development for frontline workers in New York City for 20 years, and I have never seen TDC involved in providing hands-on training to new entrants or apprentices to transportation jobs.” To this expert’s knowledge, “TDC does proposals and meetings, but no actual training.” The expert said that on one occasion his organization obtained a large grant to start a project that would provide apprenticeships. According to this expert, Mr. Sampson learned about the grant and came to a meeting asking to receive some of the funding without offering new programmatic ideas. His organization rejected Mr. Sampson’s request.

TDC’s website discusses employment, but lists “public sector” job opportunities with New York’s MTA only, and, as of the date of this

**Did TDC’s Cuba trip open the door for private interests?**

According to a local ABC affiliate, the Transportation Diversity Council organized a trip to Cuba for members of the Birmingham, Alabama transit authority that was financially sponsored by a global private transit company, MV Transportation. The ABC affiliate reported that MV and Louis Berger, the engineering firm with which TDC Chair Connie Crawford was an executive, later attended a meeting at Birmingham City Hall to make what the Chair of the City Council Transportation Committee said was “a sales pitch from companies that privatize transportation” to Birmingham government and transit agency leaders. The Transportation Committee Chair asserted, 

[p]ublic transportation is not a for-profit business and we’ve been struggling to use every dime on our transit system and to build faith in our transit system and somebody’s profiting . . . I can’t imagine anyone going to this length to destroy our transit system without having a way to make a buck off of it somewhere down the line.
E. TDC has potential conflicts of interest that interfere with its ability to effectively advocate for worker or community interests.

A review of TDC’s website reveals that TDC’s activities include supporting executive networking in public and private sector transportation and construction, and advocating for public policies that protect the profits of companies and executives in that industry.

1. TDC’s board and leaders are largely transportation executives who seek business from public transportation agencies, and executives of those public agencies, which often have conflicting interests.

TDC’s board members and leadership are almost exclusively executives of companies that seek business from transit agencies, current high-level transit agency managers, and former transit managers who now own or work for companies that do business with their former employers. There do not appear to be any frontline workers among them.

These are the affiliations of TDC’s key Directors and Principal Officers:

- Dwayne Sampson, TDC’s President and CEO, is a former Superintendent of Maintenance Operations for New York’s MTA, an immense public transportation agency that provides subway, bus and commuter rail for the tri-state New York City metropolitan area. According to his LinkedIn profile, he is also currently the President and CEO of his own consultancy, Sampson Management Enterprise, Inc. In its Forms 990 filed with the IRS for the years 2013 through 2018, TDC claims Mr. Sampson devotes 40 hours per week to TDC, yet it also claims he does not receive compensation from TDC.

- Cosema (Connie) E. Crawford, who is listed in TDC’s tax and corporate filings as Chairperson of the TDC Board of Directors, and on TDC’s website as Chair of its “Advisory Board,” is described on TDC’s website as Senior Vice President of the Louis Berger Group, an infrastructure engineering firm. Louis Berger’s work has included publicly-funded transit projects in the New York City metropolitan area such as the Newark and JFK AirTrains among many others. The Louis Berger Group is listed on TDC’s website as a “Silver Series Sponsor” and “Founding Partner” of TDC.

- Frank Otero, listed on TDC’s tax filings and Certificate of Incorporation as a Director and on TDC’s website as an Advisory Board member, is the President and CEO of PACO Technologies, Inc., which worked on multiple New York MTA construction projects. PACO Group, a related entity of which TDC Vice President Luis Lugo, Jr. is President and CEO, is listed as a “Founding Partner” of TDC on its website.

- Sheila Jordan, TDC’s “Secretary” according to the website, is a “Senior Consultant with over 20 years of corporate experience...Ms. Jordan works with senior management to link the HR strategy to the overall organizational strategy to address a variety of human resources issues including change management and workforce performance.

TDC also lists more than twenty (20) additional members of its leadership team, the vast majority of whom either serve as high-level executives of for-profit entities that do business with public transportation agencies, or are high level executives or managers of those agencies. The for-profit entities they own or manage include transportation-ori-
mented companies in the construction sector such as Smalls Construction, Inc. and New-POT Solutions, Inc.; the Rizzo Group, which represents real estate developers to address governmental land use, building code and zoning issues; law firms specializing in government contracts for corporate entities; insurance brokers for transit agencies such as National Consultants, Inc.; and management consultants for governmental entities such as PRM Consulting Group, LLC.\textsuperscript{117}

Also, several of TDC’s top leaders, such as President and CEO Dwayne Sampson, have their own consultancies\textsuperscript{118} and TDC promotes for-profit businesses affiliated with its officers and leadership on its website.\textsuperscript{119}

\textbf{2. TDC’s program services focus largely on benefiting corporate and executive members’ interests.}

Some of TDC’s initiatives, to the extent they exist, focus on the goal of enhancing diversity in the management levels of the public transportation industry. Others, however, focus on providing political advocacy and pecuniary benefits to TDC’s corporate and executive members that seem inconsistent with an independent advocate for workers and local community members. This is especially true of TDC’s description of its ENGINE\textsuperscript{120} program, which primarily supports business and institutional members of TDC.

Under its ENGINE acronym, TDC promotes itself as an “advocate for members in accessing business opportunities at agencies and institutions across the country.” TDC highlights its “Political Liaison Services,” which “apply a tactical approach in engaging the vital players in the formulation of government policy. TDC seeks out and engages senate and congressional members of committees that deliberate on transportation, construction and education issues and ensure[s] that the field is level to allow our corporate membership to participate without hindrance.”\textsuperscript{121} (Emphasis supplied)

TDC’s ENGINE initiatives also include meet-and-greets that “bring together agency representatives and TDC members... as the foundation for doing business;” making “a database of project solicitations from agencies and institutions ... available to the membership;” and marketing TDC corporate members to “agencies and institutions...such that they seek the participation of TDC members in the execution of projects; so that members can “project and grow their services.”\textsuperscript{122}

One of TDC’s more prominent activities is hosting the so-called “TDC-MIT Transportation & Infrastructure Summits,” which TDC has organized annually since 2013. The Summits largely include as speakers representatives of corporations (often those that derive revenue from government contracts) and government officials (often those responsible for contracts with the private sector), never rank and file New Flyer workers or community members affected by New Flyer’s operations.\textsuperscript{123} The Summits discuss strategies for building specific infrastructure projects that are in the development phase and actual “budgeted projects.”\textsuperscript{124} In other words, they are part of TDC’s corporate networking opportunities, without the formality and taxpayer and consumer protections of an RFP process.

TDC’s political advocacy to ensure a level playing field for its corporate members by engaging Senators and Congresspersons seems inconsistent with its ability to represent the interests of workers and community members whose interests may conflict with the activities of TDC’s corporate members.\textsuperscript{125} Moreover, TDC’s role in providing business acquisition and corporate networking opportunities seems to present a conflict with its ability to independently advocate for workers and communities affected by the operations of a major transportation manufacturer that derives 80 percent of its revenues from publicly funded agencies.\textsuperscript{126}

None of TDC’s initiatives appear to be oriented towards representing the interests of ordinary
workers employed by or community members harmed by the activities of those corporations.

Conclusion

New Flyer’s use of TDC to deflect worker and community concerns with vague, unenforceable “frameworks” and corporate PR, TDC’s activities providing corporate networking and marketing services for executives of for-profit corporations by bringing them together with senior managers of the agencies from which they seek business, and TDC’s focus on advocating for the interests of corporations seeking to profit from public transit, all point to the conclusion that New Flyer hired TDC to run an “astroturf” campaign.

In hiring TDC, New Flyer is following the same well-established corporate playbook of previous astroturf campaigns: deflect genuine worker and community complaints about race discrimination and unsafe working conditions by affiliating with a “diversity” organization that appears independent but is in fact under its corporate financial sponsorship. TDC’s advocacy for New Flyer’s interests specifically and corporate interests generally establish disqualifying conflicts of interest that prevent it from effectively advocating for worker and community interests independent of those of a major funder such as New Flyer.
Foreword Endnotes


Report Endnotes


2. Id.


7. Emily Erickson, PhD, “Anniston Community Report” to Project Funder Jobs to Move America, June 26, 2020. The findings of this report are discussed in the Introduction infra.


10. In addition, Jobs to Move America has filed complaints with the IRS and New York Attorney General requesting investigations of alleged violations by TDC and its officers and directors of tax and non-profit laws.


13. NFI website, https://www.nfigroup.com/ The backgrounds of TDC, NFI and New Flyer are discussed in Section II below.


18. Id. at 13, citing Emily Erickson, Phd, “ Working in the Industrial South[] Progress, Preliminary Results, and Next Steps,” Alabama A&M University (2019).

19. Id. at 13-14, citing Erickson, “Working in the Industrial South,” supra note 18.


22. Id. at 17, citing Erickson, “Working in the Industrial South,” supra note 18.

23. Id at 16-17.

24. Emily Erickson, PhD, “Anniston Community Report,” supra note 7. 65 percent of Black workers reported racial discrimination to be a problem at New Flyer, with nearly half (47 percent) reporting it as a “big problem.” Id. at 9. “A total of twenty-six incidents of racial discrimination were reported among New Flyer workers.” Id. “Female workers were more likely to experience sexual harassment and gender-based discrimination. Across all indicators, they reported higher numbers of incidents compared to male workers.” Id. With respect to health and safety, “…over two thirds (68 percent) of respondents reported coming into regular contact with chemical products or substances at work. Female workers (73 percent) were more likely to come into contact with chemicals than male workers (66 percent). And Black workers (74 percent) are more likely to come into contact with chemicals than white workers (65 percent).” Id. at 8. “…Black workers and Female workers reported higher incidents of workplace injuries than their counterparts.” Id. “Twenty-four percent of respondents reported filing a complaint with an outside agency . . . Two thirds . . . of those who reported filing a complaint then reported experiencing retaliation from the company for having made the complaint.” Id. Workers continued to report working long hours, having little control over their schedules, and experiencing significant mandatory overtime. Id. at 7.


26. Id. at 17.

27. Id. at 22.

28. Id. at 23.

29. “Visible minorities” in middle management and above have declined from 11.7% in 2017 to 6.8% in 2019. Only 5.6% of New Flyer executives were minorities in 2019. Id. at 22.


31. NFI Group Investor Presentation, supra note 15.


33. Id. at 30

35. The Fourth Revolution, “Alabama coalition and black union leaders call on New Flyer to negotiate a community benefits agreement,” supra note 8.


44. Monbiot, supra note 43.


46. Monbiot, supra note 43.


53. Id.

55. See Section III.C below.


58. Earnings before interest, taxes, depreciation, and amortization.

59. NFI Group Investor Presentation, supra note 15.

60. New Flyer LinkedIn page, available online at https://www.linkedin.com/company/newflyer/.


62. TDC Certificate of Incorporation, filed with the New York Department of State May 16, 2011.


65. In addition, Jobs to Move America has raised legal concerns in complaints that it filed with the IRS and New York Attorney General in August, 2020.

66. However, a growing number of agencies have adopted the U.S. Employment Plan (USEP), a federally-approved policy tool developed by Jobs to Move America to build good jobs and equity into the public purchasing process. It has been proven to incentivize manufacturers seeking public contracts to commit to creating good jobs, build their facilities in local communities, and create career pathways for people traditionally left out of the manufacturing sector, including women, people of color, veterans, and formerly incarcerated folks. To date, the USEP has been used by cities and states across the country on billions of dollars of infrastructure projects from the Northeast Corridor to Chicago and Los Angeles. Thanks to the USEP, that spending has already created thousands of direct jobs and has supported the creation of tens of thousands of additional indirect jobs. Jobs to Move America, “U.S. Employment Plan.” Available online at https://jobstomoveamerica.org/resource/u-s-employment-plan-2/.


68. The information from Mr. Cummings was gleaned from a May 11, 2020 interview and follow-up correspondence. Mr. Cummings has both worked on and written extensively about Community Benefits Agreements for 22 years. As an attorney in the Community Development Project at Public Counsel in Los Angeles, he worked with the Figueroa Corridor Coalition on the nation’s first major Community Benefits Agreement. His writing about CBAs includes a forthcoming book from Oxford University Press with a chapter on the history of CBAs in Los Angeles, from the Staples Center through the downtown Grant Avenue Project. Mr. Cummings’ bio is here: https://law.ucla.edu/faculty/faculty-profiles/scott-l-cummings/

69. The information from Mr. Beach was gleaned from a May 13, 2020 interview and follow-up correspondence. For nearly two decades, Mr. Beach has been working with community-based organizations and coalitions that are seeking, as well as with entities and governments and foundations that are exploring or pursuing, a Community Benefits approach to economic development projects. He has personally negotiated and drafted multiple CBAs across several different jurisdictions. Along with colleagues at the Community Benefits Law Center, he has done a great deal of research and published writing regarding Community Benefits Agreements, including published work comparing the components of effective and ineffective CBAs. He has written for both academic and field publications, including the American Bar Association and the Journal of Law and Policy. See https://www.for Workingfamilies.org/leadership/people/ben-beach.


71. Id., at 9.


73. Quotes from Mr. Beach in this section are drawn from a May 19, 2020 email to the author.
74. Quote from May 11, 2020 interview of Scott Cummings.

75. May 19, 2020 email from Ben Beach to the author.


78. “New Flyer was fined $49,707 for eight serious violations and two less-than-serious violations. New Flyer appealed and settled the matter before it was heard by an administrative law judge. The settlement reduced four of the ‘Serious’ violations to ‘Oth-
er-Than-Serious’ status, withdrew one violation, and lowered the fine to $25,000. Among the violations found in the Anniston plant were:

- Failure to maintain the plant in ‘a clean and sanitary condition.’ The citation noted the hazardous storage of electrical cords, tools, hoses, and cooling vests.
- Failure to keep passageways and exits open and accessible.
- Failure to install guardrails or fall protection for employees working at height.
- Failure to provide proper Personal Protective Equipment (PPE) or adequate respiratory equipment.”

Good Jobs Everywhere, supra note 6 at 16-17, citing Occupational Safety and Health Administration, Inspection #1154031.


82. Described at note 66 supra.


85. In July 8, 2020, correspondence with a JMA Alabama staff member, two New Flyer workers in Anniston, Alabama stated they had never heard of TDC. No workers informed this JMA staff person that they had heard of TDC. On May 21, 2020, a CWA staff member conducted a survey of New Flyer employees in St. Cloud and Crookston, Minnesota on a Facebook page for New Flyer bargaining unit employees in those locations. The staff person asked workers whether they had ever been spoken to by or whether they had heard of TDC. Twenty New Flyer workers responded that they had never been spoken to by anyone from nor had they heard of TDC. Only a single responding employee had even heard of TDC, and that was from New Flyer management. None had been spoken to by TDC. In July 8, 2020 correspondence with a CWA staff member, two New Flyer employees in the Shephersville, KY facility stated that they had ever seen anyone from TDC at the plant. On or about July 13, 2020, a CWA staff member corresponded with a New Flyer worker in Jamestown, New York, who had also never heard of TDC, and specifically indicated that TDC had provided no diversity or other training there. On July 27, 2020, a JMA California staff member interviewed a worker employed at the New Flyer facility in Ontario, California, who had never heard about or received TDC training or job placement services, nor had the worker ever heard of TDC.


89. “New Flyer of America in partnership with TDC Launches its National Community Benefits Framework,” supra note 86.


93. See, e.g., September 19, 2019 letter from TDC VP Thalia Goldsboro-Patton to JMA Southern Program Director Patricia Todd. Available from author.

94. May 27, 2020 interview of JMA Executive Director Madeline Janis.


97. See note 85 supra.

98. TDC’s Forms 990 for the years 2013 through 2018 are available online at ProPublica Nonprofit Explorer, “National Transportation Diversity Council Tax Filings by Year,” https://projects.propublica.org/nonprofits/organizations/273959732. None of these 990s list any amount expended under “grants and other assistance to…individuals,” (part IX, line 2). Nor do any of the 990s contain a Schedule I, where charities are required to report more than $5,000 aggregate grants and other assistance, and where they are required to affirm their recordkeeping regarding grants and assistance, as well as how they monitor the use of grant funds. Also see IRS Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, which states:

“A public charity that makes grants to individuals must keep adequate records and case histories to demonstrate that the grants serve its charitable purposes. Case histories on grants to individuals should show names, addresses, purposes of grants, manner of selection and relationship (if any) that the recipient has with any members, officers, trustees or donors of the organization.”

Id. at 16. Nor did TDC report its solicitation of donations for scholarships and “sponsorships” as “fundraising activities” on any of its Schedule Gs.


102. TDC website, http://tdc-ntl.org/training-education. In 2013, TDC co-sponsored an “engineering day” with New York’s MTA, that included students from TDC’s Bronx Design and Construction Academy, in which “Engineers and architects working on the Second Avenue Subway, East Side Access, No. 7 Extension and Fulton Center projects, presented their own project work . . .” MTA news release, reported in US Official News (Pakistan), 3/2/13. PACO Technologies and the PACO Group, of which, respectively, TDC Board members Frank Otero and VP Luis Lugo, Jr. are President and CEO, list these as construction management projects of their companies.

103. TDC website, http://tdc-ntl.org/employment

104. MTA agencies include New York City Transit (the public agency that provides New York City’s subway and bus service, http://www.mta.info/nyct), the Long Island Railroad (the public agency that provides commuter railroad service between New York City and Long Island, http://www.mta.info/lirr), the Metro-North Railroad (public agency that provides commuter railroad service between New York City and its suburbs on Connecticut and New York state, http://www.mta.info/mnr), MTA Bridges and Tunnels (public agency which operates seven bridges and two tunnels into and out of New York City, https://new.mta.info/bridges-and-tunnels), the MTA Bus Company (which also provides bus service in the NYC metropolitan area, https://new.mta.info/agency/mta-bus-company), and MTA
Construction and Development (which contracts with private, for-profit entities to build infrastructure such as stations, signals, and new buses and trains, https://new.mta.info/agency/construction-and-development).


107. See, for example, Part VII.A.1a of TDC’s IRS Form 990 for the year 2018, which lists Ms. Crawford’s TDC title as “Charu [sic] Person.” https://projects.propublica.org/nonprofits/display_990/273959732/09_2019_prefixes_26-27%2F2F273959732_201812_990_2019092016675354. TDC’s 2011 Certificate of Incorporation lists Ms. Crawford as “Chairperson” as well. TDC’s CHAR 410 (a mandatory registration statement for Charitable organizations that TDC filed with the New York Attorney General in 2012) also lists Ms. Crawford as “Chair” under “Officers, Directors and Key Employees.” Compare to Ms. Crawford’s page on the TDC website, which lists her as Advisory Board Chair: http://tdc-ntl.org/leadership/frank-otero.

108. Both AirTrains are under the jurisdiction of the Port Authority of New York and New Jersey.


112. TDC website, http://tdc-ntl.org/leadership/frank-otero

113. Projects listed on the PACO Technologies website include New York City’s Penn Station Redevelopment (which includes the MTA’s Long Island Railroad and New Jersey Transit), Second Avenue Subway, Fulton Center (a shopping mall at the new Fulton Street subway station), and Grand Central Station East Side Access project. www.pacotechnologies.com


118. As noted in the text accompanying note 105 above, TDC President and CEO Dwayne Sampson is also the President and CEO of Sampson Management Enterprise, Inc., which was incorporated in New York on February 21, 2017. https://opencorporates.com/companies/us_ny/5088194


120. TDC website, http://tdc-ntl.org/engine

121. TDC website, http://tdc-ntl.org/navigate-%e2%80%93-advocacy

122. TDC website, http://tdc-ntl.org/engage-%e2%80%93-agency-interaction

123. For example, participants in TDC’s 2015 Summit included “federal and regional agency and corporate leadership,” and
speakers included the Chair of the National Transportation Safety Board, the Maryland Secretary of Transportation, the Chair of
the Washington Metro Area Transit Authority, and a Senior Vice President at Louis Berger. Baltimore City Source Link, “Trans-
event-detail/2015/12/02/default-calendar/transportation-diversity-council-infrastructure-summit. Speakers at the 2019 Summit
included “experts from regional agencies and companies representing all modes of transportation.” University of Connecticut, “The
php?id=64570&cid=57&id=9461. These speakers were largely TDC Board members and leadership: Eventbrite, “2019 TDC-MIT
Transportation & Infrastructure Summit,” Available online at https://www.eventbrite.com/e/2019-tdc-mit-transportation-infrastruc-
ture-summit-tickets-57130736571#.

TDC’s 2013 Summit was addressed by the Acting District Director of the Small Business Administration, and its “participants” includ-
ed “dynamic and energetic leaders from: DDOT, MDOT, VDOT, WMATA, New York MTA; FHWA Civil Rights Office, APTA, COMTO;
Con Edison, Duke Energy, Tangent Energy, Atlantic Wind Connection; Louis Berger Group, Union Station Development, Dulles Rail

124. Id.

125. Moreover, if these are a substantial part of TDC’s activities, they may be inconsistent with the tax-exempt purposes of TDC
as a 501(c)(3) not-for-profit. Notwithstanding TDC’s assertion on its website that it engages in legislative advocacy, in every annual
IRS Form 990 it has filed since 2013, TDC has answered “No” to the question whether it engages in lobbying activities, and failed
to file the Schedule C required of 501(c)(3) organizations that engage in lobbying activities. ProPublica Nonprofit Explorer, “National
Transportation Diversity Council Tax Filings by Year,” supra note 98. Available online at https://projects.propublica.org/nonprofits/
organizations/273959732.

gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501c3

127. Lauren Walsh, “Questions surround Cuba trip, transportation meeting, BJCTA Director leaving,” ABC 33/40 News, October 12,

128. Walsh, “Questions surround Cuba trip,” supra note 120.

Photos and Design

New Flyer bus and factory photos from Kristain Baty/Flickr.
Calhoun County Court House photo from Jimmy Emerson, DVM/Flickr.
Road signs from formulapane/Flickr.
Freedom Riders bus memorial photo from Mark Michalovic/Wikimedia Commons.
Graphic critique of the New Flyer “Framework” by Matthew Goerzen.
Cover and inserts designed by Tremé Manning-Céré.