

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

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WHITE COAT WASTE PROJECT,	:	
	:	Civil Action No. 3:17cv00719
	:	
Plaintiff,	:	COMPLAINT FOR
	:	DECLARATORY AND
vs.	:	INJUNCTIVE RELIEF
	:	
GREATER RICHMOND TRANSIT	:	
COMPANY,	:	
	:	
Defendant.	:	
	:	
.....	:	

INTRODUCTION

The Greater Richmond Transit Company (GRTC) is the public transportation operator for the Richmond, Virginia metropolitan area. GRTC provides advertising space in and on its buses that allow the great majority of advertisers to publish advertisements but purports to prohibit “[a]ll political ads.” Plaintiff White Coat Waste Project (WCW) would like to buy advertising space on GRTC buses for its advertisements. GRTC rejected WCW’s proposed advertisement based on its “[a]ll political ads” prohibition, or at least GRTC’s interpretation and implementation of that prohibition. GRTC does not have a legitimate, let alone a compelling government interest, in prohibiting “political” advertising or in rejecting WCW’s advertising. GRTC’s “political” advertising prohibition, or its interpretation and implementation of that prohibition, allow GRTC to discriminate against advertisers based on the advertiser’s identity, the advertiser’s known or presumed viewpoints, the content of the advertisement’s message, or the advertiser’s line of business. By rejecting WCW’s advertisement, GRTC violated WCW’s

First and Fourteenth Amendment rights.

JURISDICTION AND VENUE

1. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 as this is an action to redress the deprivation, under color of state law, of rights secured by the Constitution and laws of the United States. WCW seeks remedies under 42 U.S.C. §§ 1983 and 1988 (protection of constitutional rights), Fed R. Civ. P. 65 (injunctive relief), and 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57 (declaratory relief).

2. Venue is proper under 28 U.S.C. § 1391 because GRTC's acts in violation of the United States Constitution have arisen and continue to arise in the Eastern District of Virginia.

PARTIES

3. Plaintiff White Coat Waste Project, Inc. is a bipartisan non-profit taxpayer watchdog organization pursuant to Section 501(c)(3) of the Internal Revenue Code, with its headquarters located at 901 M Street NW #830, Washington, DC, 20001. WCW's mission is to unite animal-lovers and liberty-lovers to expose and end wasteful taxpayer-funded animal experiments.

4. Defendant Greater Richmond Transit Authority is a government entity owned by the City of Richmond and Chesterfield County that provides public transportation in the Richmond area. It has an annual budget of more than forty million dollars. At all times relevant to this Complaint, GRTC acted under color of state law.

FACTS

5. GRTC sells advertising opportunities in and on GRTC buses, earning approximately half a million dollars in advertising revenue a year.

6. GRTC uses the services of an out-of-home media company, Media Transit, to manage its advertising sales and placement. Prospective GRTC advertisers submit proposed advertisements

to Media Transit, but GRTC, not Media Transit, makes the decisions about whether a proposed advertisement complies with GRTC's advertising policy.

7. At all times relevant to the matters set forth in this Complaint, GRTC had and currently has in place a written policy concerning the acceptance of advertising to run in or on GRTC buses (the Policy). The Policy states:

All advertising is subject to approval by GRTC and/or its designated representative. GRTC prohibits the display of the following types of advertising copy or graphics:

1. False, misleading, or deceptive.
2. Related to or promotes illegal activity.
3. Explicit sexual material, obscene material, or material harmful to minors.
4. Alcohol or tobacco related.
5. Violence and/or anti-social behavior.
6. Language which is obscene, vulgar, profane, or scatological.
7. Appears to promote the use of firearms.
8. Contains images, copy or concepts that actively denigrate public transportation, GRTC Transit System, or any of its divisions or services.
9. Religious or anti-religious messages regardless of viewpoint.
10. Derogatory or defamatory messages, hate speech and/or language whose message targets or bashes individuals or specific groups.
11. All political ads.
12. Adult entertainment, including cinematic and live venues and sexually oriented products or services.
13. Contains images or symbols that depict or represent graffiti.
14. Contains internet address(es) and/or telephone number(s) that direct(s) viewers to materials, images or information that would violate this advertising policy if they were contains in advertising displayed or posted on GRTC Transit Systems vehicles.”

8. As part of its efforts expose and end wasteful taxpayer-funded animal experiments, WCW is engaged in an active campaign to end taxpayer funding for dog experiments at the Richmond Hunter Holmes McGuire VA Medical Center (McGuire VAMC).

9. Using documents obtained through FOIA, WCW showed that McGuire VAMC researchers failed to comply with federal humane care regulations under the Animal Welfare Act (AWA), resulting in the deaths of numerous dogs during experiments. A member of McGuire VAMC's own internal watchdog found that a McGuire VAMC researcher showed "reckless behavior" and "lack of foresight" after cutting open a dog's lung during a heart surgery and warned that future AWA violations could result in suspension or termination of animal experiments at the facility.

10. In response, Congress demanded action and the Department of Veterans Affairs' Office of Inspector General confirmed that it opened an investigation into the botched dog experiments. This controversy generated significant media and public interest. *See, e.g.,* Leo Shane III, *Animal rights group accuses VA of using dogs in questionable experiments*, Military Times, March 21, 2017, available at: <http://www.militarytimes.com/articles/va-medical-experiments-dogs-wcw>.

11. The Department of Veterans Affairs' investigation into a complaint filed by WCW substantiated the main charges and documented extensive, additional oversight failures and animal welfare violations that had not previously been identified or reported by McGuire VAMC. *See* Jonah Bennett, *EXCLUSIVE: VA Oversight Office Finds Evidence Of Abuse And Oversight Failures In Dog Experimentation Program*, The Daily Caller, June 26, 2017, available at: <http://dailycaller.com/2017/06/26/exclusive-va-oversight-office-finds-evidence-of-abuse-and-oversight-failures-in-dog-experimentation-program/>.

12. WCW's exposé of the McGuire VAMC's botched dog experiments led to the

introduction of the bipartisan “Preventing Unkind and Painful Procedures and Experiments on Respected Species (PUPPERS) Act” (HR 3197), introduced by Richmond, VA-area Congressman Dave Brat (R-VA) and Nevada Congresswoman Dina Titus (D-NV). If enacted, the PUPPERS Act would prohibit taxpayers’ money from being spent on painful dog experiments at the VA. In July 2017, the U.S. House of Representatives voted unanimously to prohibit FY18 funding for the VA’s most painful categories of dog experiments, including those at McGuire VAMC.

13. As part of WCW’s ongoing campaign against McGuire VAMC’s dog experiments, WCW seeks to run the following advertisement with GRTC:



14. The PUBLIC Foundation, a non-profit media organization that works to pair media space with social-change non-profits in local, national, and global markets, offered to assist WCW in placing advertisements for its campaign against the Department of Veterans Affairs’ dog experiments. On March 22, 2017, the PUBLIC Foundation contacted GRTC’s advertising vendor seeking to place WCW’s advertisement with the GRTC. The vendor contacted GRTC for approval. GRTC rejected the advertisement pursuant to its prohibition on “political ads.”

15. The same day, WCW’s Vice President for Advocacy and Public Policy Justin Goodman followed up directly with GRTC’s Director of Communications Carrie Ross Pace explaining that the advertisement was a public education advertisement, detailing that WCW is a bipartisan

nonprofit pursuant to section 501(c)(3) of the Internal Revenue Code, seeking clarification on how GRTC interpreted “political ad,” and asking if there was any aspect of the advertisement that WCW could change to comply with GRTC’s Policy. In response, Ross Pace stated that educational issue advertisements could be considered public service advertisements, which GRTC does run “from local jurisdictional offices,” and explained that if WCW “partnered, for example, with the City of Richmond’s Animal Care and Control, and this is a PSA in conjunction with a local jurisdiction’s public education campaign, [the GRTC] can usually place the ad.”

16. On information and belief, GRTC has rejected numerous issue advertisement based on its “political ads” prohibition.

17. In January of 2016, GRTC originally accepted and ran the following advertisement by the Physicians Committee for Responsible Medicine that advocated keeping fast food restaurants out of hospitals:



18. After initially running the Physician Committee advertisement, GRTC pulled it from its buses on the basis of its “political ad” prohibition and refunded the Physicians Committee a portion of the money it paid for the advertisement.

19. Public records WCW obtained from GRTC show GRTC rejecting a proposed advertisement from the Virginia Hospital & Health Care Association stating “Virginia Hospitals are Willing to Go ALL IN for Health Care.” GRTC told the Virginia Hospital & Health Care Association it would accept an advertisement that read “support Virginia hospitals” but “Virginia Hospitals are Willing to Go ALL IN for Health Care” was rejected “because the group does have political leanings related to policy.”

20. The records also show GRTC accepting an advertisement promoting the 2016 Vice Presidential debates at Longwood college. According to GRTC, advertising a Vice Presidential debate did not run afoul of its prohibition on “political ads” because “all political parties [were] invited to participate, it is neutral and state-approved” and “does not advertise a political message for any perspective.” GRTC also noted that the advertisement did not violate the “political ad” prohibition because the “Commission on Presidential Debates is a nonpartisan organization.”

21. GRTC ran advertisements in English and Spanish from an organization known as Virginia>AIDS stating “HIV SHOULDN’T STAND IN THE WAY OF L[O]VE. Find out about PrEP and treatment as prevention.” and “LOVE YOURSELF, L[O]VE YOUR BABY. Pregnant? Get tested for HIV. Treatment can reduce the chance of passing the virus to your baby.” The GTRC email approving the advertisement stated that it complied with GTRC’s policies because Virginia>AIDS partnered with local health departments and because the Virginia Department of Health partnered on the advertisement.

22. GRTC recently ran advertisements for Virginia Commonwealth University's student-initiated Intercultural Festival, the Autism Society of Central Virginia's 5 kilometer run/walk, and an advertisement from the Autism Society of Central Virginia's promoting Autism Awareness Month.

23. RTC's records show that it rejected an advertisement proposed by Bethany Christian Services regarding pregnancy counseling services. The advertisement did not mention Bethany Christian Services or its primary website Bethany.org, and included only a reference to "ImPregnant.org," which was devoid of religious messages. Despite the fact that neither Bethany Christian Services' name nor its Bethany.org website were mentioned in the advertisement, GRTC rejected the advertisement because Bethany Christian Services' name included a religious reference and the Bethany.org website included religious content. "The branding on the ad you submitted looked fine and in line with the policy," GRTC wrote. "The part that broke the policy is the website, which takes customers to a website with religious messaging." GRTC suggested that the advertisement would be accepted if Bethany "partnered with the City of Richmond, Commonwealth or US Government."

24. GRTC's Policy does not define "political." Because the Policy does not define this term, it fails to enable a reasonable member of the public to know which advertisements are permitted or prohibited under the Policy, and it vest GTRC officials with the unfettered discretion to decide which advertisements to permit or reject. For instance, it is unclear whether Exxon Mobil would be permitted to run an advertisement promoting its care of the environment, or BP promoting its clean-up efforts in the wake of the Deepwater Horizon oil spill.

25. RTC's Policy is content-based because it draws distinctions based on the message a speaker conveys and defines regulated speech by particular subject matter.

26. GRTC's Policy, and GRTC's implementation of the Policy, is viewpoint-discriminatory. The unguided discretion to determine what is or is not a "political ad" authorizes and encourages discriminatory enforcement against controversial or unpopular viewpoints, and has resulted in discriminatory enforcement against controversial or unpopular viewpoints.

27. For instance, under the Policy, GRTC could permit the display of an advertisement promoting a "fracking" convention in the city, but environmental activists would be prohibited from running an advertisement criticizing the fracking industry. The American Red Cross could run an advertisement with GRTC extolling the organization's virtues, but critics of the American Red Cross's sometimes-questionable spending practices¹ would be prohibited from running their own advertisement. A military contractor could advertise weapons of war, but anti-war activists would be prohibited from running an advertisement criticizing the same military contractor. McDonald's could run advertisements saying, "Buy Hamburgers," but animal rights activists are prohibited from running advertisements saying, "Don't Buy Hamburgers."

28. Similarly, by allowing advertisements that would otherwise violate its guidelines to run if (and only if) the advertiser partners with a government entity, GRTC's implementation of the Policy discriminates on the basis of the identity of the speaker. The Policy allows an ad to run by a speaker who is partnered with a local government entity, but rejects the exact same advertisement by another unpartnered advertiser.

29. The display of WCW's advertisement will cause no harm of any kind to GRTC, the city of Richmond, the county of Chesterfield, the passengers who ride GRTC buses, or the public who view GRTC's advertising space.

¹ See, e.g., Linda Bever, *People are urging donations for Harvey relief efforts — just not to the Red Cross*, Washington Post, August 28, 2017, available at: <https://www.washingtonpost.com/news/post-nation/wp/2017/08/28/people-are-urging-donations->

30. WCW still wishes to place the same advertisement, and similar advertisements, in GTRC advertising spaces. WCW is suffering irreparable injury during the time its advertisements are not permitted to run on GTRC advertising spaces. WCW has no adequate remedy at law.

31. GTRC has applied a system of prior restraint to refuse WCW's proposed advertisement on the bases of its content and/or viewpoint that does not include constitutionally adequate standards.

FIRST CAUSE OF ACTION
Infringement of Freedom of Speech
First and Fourteenth Amendments (42 U.S.C. § 1983)

32. WCW incorporates the allegations contained in the preceding paragraphs as if set forth fully herein.

33. GTRC's Policy prohibiting "political ads," and/or the GTRC's interpretation and implementation of that Policy, is a content- and viewpoint-based discrimination that is not narrowly tailored to promote a compelling government interest, in violation of the First and Fourteenth Amendments to the United States Constitution.

34. GTRC's Policy prohibiting "political ads," and/or the GTRC's interpretation and implementation of that Policy, is a content- and viewpoint-based discrimination that does not serve a substantial interest and is not narrowly drawn, in violation of the First and Fourteenth Amendments to the United States Constitution.

35. GTRC's Policy prohibiting "political ads," and/or the GTRC's interpretation and implementation of that Policy, is not rationally related to a legitimate governmental objective, in violation of the First and Fourteenth Amendments to the United States Constitution.

36. GTRC's Policy prohibiting "political ads," and/or the GTRC's interpretation and

implementation of that Policy, is a content- and viewpoint-based discrimination that is not narrowly tailored to promote a compelling government interest, in violation of the First and Fourteenth Amendments to the United States Constitution.

37. GRTC's Policy prohibiting "political ads," and/or the GRTC's interpretation and implementation of that Policy, gives GRTC unfettered discretion in enforcement, in violation of the First and Fourteenth Amendments to the United States Constitution.

38. GRTC's Policy prohibiting "political ads," and/or the GRTC's interpretation and implementation of that Policy, is overbroad, in violation of the First and Fourteenth Amendments to the United States Constitution.

39. GRTC's refusal to run WCW's advertisement amounts to discrimination on the basis of content and/or viewpoint in violation of the First and Fourteenth Amendments to the United State Constitution.

40. By rejecting of WCW's advertisement as a "political ad," GRTC failed to follow its own regulations, in violation of the "*Accardi* doctrine."

41. WCW has suffered and will continue to suffer irreparable harm and the deprivation of its rights because of GRTC's unconstitutional Policy and practices.

SECOND CAUSE OF ACTION
Vagueness
First and Fourteenth Amendment (42 U.S.C. § 1983)

42. WCW incorporates the allegations contained in the preceding paragraphs as if set forth fully herein.

43. GRTC's Policy prohibiting "political ads" is not clearly defined such that a person of ordinary intelligence can readily determine whether an advertisement is allowable or prohibited.

44. The criteria GRTC used and is using to prohibit WCW's advertisement are not clearly

defined such that a person of ordinary intelligence can readily determine whether an advertisement is allowable or prohibited. Such vagueness also contributes to the unfettered discretion exercised by defendant.

45. GRTC's Policy prohibiting "political ads," and/or the GRTC's interpretation and implementation of that Policy, violate WCW's rights under the First Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

46. WCW has suffered and will continue to suffer irreparable harm and the deprivation of its rights because of GRTC's unconstitutional Policy and practices.

REQUESTED RELIEF

WCW requests that this Court:

- a. Declare that GRTC has violated and is violating WCW's rights under the First and Fourteenth Amendment to the United States Constitution;
- b. Declare that GRTC's Policy prohibiting "political ads" is facially unconstitutional under the First and Fourteenth Amendments to the United States Constitution;
- c. Declare that GRTC's interpretation and implementation of its Policy prohibiting "political ads" is unconstitutional as applied under the First and Fourteenth Amendments to the United States Constitution;
- d. Grant WCW preliminary and permanent injunctive relief ordering GRTC to accept and display WCW's proposed advertisement on terms no less favorable than those given to other advertisers;
- e. Grant WCW preliminary and permanent injunctive relief enjoining GRTC, their employees, agents, successors, and assigns, and all persons acting in concert with them, from continuing to enforce GRTC's Policy prohibiting "political ads";

- f. Award WCW their costs and reasonable attorneys' fees in this action;
- g. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,
WHITE COAT WASTE PROJECT,
By Counsel

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